

**U.S. District Court
Southern District of Alabama (Mobile)
CIVIL DOCKET FOR CASE #: 1:09-cv-00563-C
*Internal Use Only***

Dalton v. Cardworks Services, LLC
Assigned to: Magistrate Judge William E. Cassady
Cause: 15:1692 Fair Debt Collection Act

Date Filed: 08/28/2009
Jury Demand: Plaintiff
Nature of Suit: 480 Consumer Credit
Jurisdiction: Federal Question

Plaintiff

Sussi J. Dalton

represented by **Earl P. Underwood**
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V.

Defendant

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Email All Attorneys

Email All Attorneys and Additional Recipients

Date Filed	#	Page	Docket Text
08/28/2009	<u>1</u>	6	COMPLAINT against Cardworks Services, LLC (Receipt number 24VNR0BC, Fee Paid at Intake), filed by Sussi J. Dalton. (Riemer, Kenneth) (Additional attachment(s) added on 8/31/2009: # <u>1</u> Civil Cover Sheet) (mpp,). (Entered: 08/28/2009)
08/31/2009	<u>2</u>	14	NOTICE of Filing Proposed Summons by Sussi J. Dalton <i>for Cardworks Servicing, LLC</i> (Riemer, Kenneth) (Entered: 08/31/2009)
08/31/2009	<u>3</u>	16	Summons Issued as to Cardworks Services, LLC. Left msg. with Ken Riemer's office for pickup. (mpp) (Entered: 08/31/2009)
08/31/2009	<u>4</u>	18	Filing fee: \$ 350.00, receipt number 15479 (adk) (Entered: 09/01/2009)
09/09/2009	<u>5</u>	19	SUMMONS Returned Executed by Sussi J. Dalton. Cardworks Services, LLC served on 9/3/2009, answer due 9/23/2009. (Riemer, Kenneth) (Entered: 09/09/2009)
09/24/2009	<u>6</u>	21	Unopposed MOTION for Extension of Time to File Answer re <u>1</u> Complaint by Cardworks Services, LLC. (Newman, James) (Entered: 09/24/2009)
09/24/2009	<u>7</u>	23	Corporate Disclosure Statement filed by Defendant Cardworks Services, LLC. (Newman, James) (Entered: 09/24/2009)
09/29/2009	8	25	ENDORSED ORDER granting <u>6</u> Motion for Extension of Time to Answer; Answer due from Cardworks Services, LLC on 10/7/2009. Signed by Senior Judge Charles R. Butler, Jr on September 29, 2009. (aen) (Entered: 09/29/2009)
10/01/2009	9	26	Order. A review of the disclosure statement presented by defendant CardWorks Servicing, LLC (Doc. 7), pursuant to Local Rule 3.4, has been completed. That review has not revealed any reason to believe that there are any actual or potential conflicts of interest that would require disqualification or recusal in this action.Signed by Magistrate Judge William E. Cassady on 10-1-09. (Cassady, William) (Entered: 10/01/2009)
10/07/2009	<u>10</u>	27	ANSWER to <u>1</u> Complaint by Cardworks Services, LLC. (Newman, James) (Entered: 10/07/2009)

10/08/2009	<u>11</u>	34	PRELIMINARY SCHEDULING ORDER entered.Rule 26 Meeting Report due by 11/23/2009.Signed by Magistrate Judge William E. Cassady on 10/08/09. (adk) (Entered: 10/09/2009)
11/23/2009	<u>12</u>	39	REPORT of Rule 26(f) Planning Meeting. (Newman, James) (Entered: 11/23/2009)
12/23/2009	<u>13</u>	45	SCHEDULING ORDER:Amended Pleadings due by 4/2/2010. Discovery cutoff 6/22/2010. Motions due by 6/22/2010. Position Regarding Settlement due by 6/22/2010. Signed by Magistrate Judge William E. Cassady on 12/22/09. (adk) (Entered: 12/23/2009)
01/12/2010	<u>14</u>	52	Notice of Filing Rule 26(a)(1) Initial Disclosures filed by Cardworks Services, LLC. (Newman, James) (Entered: 01/12/2010)
01/12/2010	<u>15</u>	54	Notice of Filing Initial Disclosures filed by Sussi J. Dalton. (Patterson, James) (Entered: 01/12/2010)
08/04/2010	<u>16</u>	57	Joint MOTION Motion for Preliminary Approval of Class Settlement Agreement by Cardworks Services, LLC, Sussi J. Dalton. (Newman, James) (Entered: 08/04/2010)
08/13/2010	<u>17</u>	79	Order re: <u>16</u> Joint MOTION Motion for Preliminary Approval of Class Settlement Agreement filed by Sussi J. Dalton, Cardworks Services, LLC, (Responses due by 8/30/2010). Signed by Magistrate Judge William E. Cassady on 8/13/10. (adk) (Entered: 08/16/2010)
08/30/2010	<u>18</u>	82	Unopposed MOTION for Extension of Time <i>to file Plaintiff's Declaration in Support of Motion for Preliminary Approval</i> , MOTION for Extension of Time to File by Sussi J. Dalton. (Underwood, Earl) (Entered: 08/30/2010)
08/30/2010	<u>19</u>	84	AFFIDAVIT in Support re <u>16</u> Joint MOTION Motion for Preliminary Approval of Class Settlement Agreement filed by Sussi J. Dalton. (Attachments: # <u>1</u> Exhibit A &B) (Underwood, Earl) (Entered: 08/30/2010)
08/31/2010	20	102	ENDORSED ORDER granting <u>18</u> Motion for Extension of Time; granting <u>18</u> Motion for Extension of Time to File Document. Signed by Magistrate Judge William E. Cassady on 8-31-10. (Cassady, William) (Entered: 08/31/2010)
09/06/2010	<u>21</u>	103	Memorandum in Support re <u>16</u> Joint MOTION Motion for Preliminary Approval of Class Settlement Agreement, <u>17</u> Order, Set Motion Deadlines/Hearings filed by Sussi J. Dalton. (Attachments: # <u>1</u> Affidavit Declaration of Sussi Dalton) (Underwood, Earl) (Entered: 09/06/2010)
09/21/2010	<u>22</u>	116	Order (Status Conference set for 10/5/2010 10:00 AM in US Courthouse, Courtroom 3A, 113 St. Joseph Street, Mobile, AL 36602 before Magistrate Judge William E. Cassady.) Signed by Magistrate Judge William E. Cassady on 9/21/10. (adk) (Entered: 09/22/2010)
09/22/2010	<u>23</u>	121	Order re: <u>22</u> Order, The status conference presently scheduled for October 5, 2010, before the undersigned, is hereby RESCHEDULED for October 12, 2010, at 10:00 a.m., in Courtroom 3A. Signed by Magistrate Judge William E. Cassady on 9/22/10. (eec) (Entered: 09/22/2010)
10/12/2010		122	Minute Entry for proceedings held before Magistrate Judge William E. Cassady: Status Conference held on 10/12/2010. FTR Digital Audio Recording. (eec)

			(Entered: 10/12/2010)
10/15/2010	<u>24</u>	123	Order directing the parties to reconsider structuring their proposed settlement to include an "opt-out" class and present a revised settlement agreement and revised proposed class notice to the undersigned by 10/28/2010.. Signed by Magistrate Judge William E. Cassady on 10/14/10. (adk) (Entered: 10/15/2010)
10/28/2010	<u>25</u>	129	Unopposed MOTION for Extension of Time <i>to file settlement agreement</i> by Sussi J. Dalton. (Underwood, Earl) (Entered: 10/28/2010)
10/29/2010	<u>26</u>	131	ORDER granting <u>25</u> Motion for Extension of Time Settlement Position due by 11/4/2010.. Signed by Magistrate Judge William E. Cassady on 10/29/10. (adk) (Entered: 11/01/2010)
11/11/2010	<u>27</u>	133	Joint MOTION to Approve Settlement Agreement (<i>Preliminary Approval of Class Settlement Agreement</i>) by Cardworks Services, LLC, Sussi J. Dalton. (Newman, James) (Entered: 11/11/2010)
11/19/2010	<u>28</u>	160	REPORT AND RECOMMENDATIONS re <u>16</u> Joint MOTION Motion for Preliminary Approval of Class Settlement Agreement filed by Sussi J. Dalton, Cardworks Services, LLC, <u>27</u> Joint MOTION to Approve Settlement Agreement (<i>Preliminary Approval of Class Settlement Agreement</i>) filed by Sussi J. Dalton, Cardworks Services, LLC. Objections to RRdue by 12/3/2010. Signed by Magistrate Judge William E. Cassady on 11/18/10. (adk) (Entered: 11/19/2010)
12/02/2010	<u>29</u>	181	CONSENT to Jurisdiction by US Magistrate Judge by Sussi J. Dalton, Cardworks Services, LLC.. (Newman, James) (Entered: 12/02/2010)
12/21/2010	<u>30</u>	182	ORDER ADOPTING the Report and Recommendation of the Magistrate Judge (Doc. 28) that the parties joint motion for preliminary approval of class settlement be granted. Pursuant to the consent to Magistrate, this case is referred to Judge Cassady for further action. Signed by Senior Judge Charles R. Butler, Jr on 12/21/10. (adk) (Entered: 12/21/2010)
12/21/2010	<u>31</u>	183	ORDER REFERRING CASE to Magistrate Judge. IT IS HEREBY ORDERED that this case be referred to the United States Magistrate Judge, to conduct all proceedings and order the entry of judgment in accordance with 28 U.S.C. 636(c) and Fed.R.Civ.P.73.. Signed by Senior Judge Charles R. Butler, Jr on 12/21/10. (adk) (Entered: 12/21/2010)
12/30/2010	<u>32</u>	184	Order entered that the parties are to propose a date for the Fairness Hearing and notify the Court of that date by 1/13/2011. Signed by Magistrate Judge William E. Cassady on 12/30/2010. (mbp) (Entered: 12/30/2010)
01/13/2011	<u>33</u>	186	RESPONSE TO ORDER re: <u>32</u> Order, Set Deadlines by Cardworks Services, LLC, Sussi J. Dalton filed by Cardworks Services, LLC, Sussi J. Dalton. (Newman, James) (Entered: 01/13/2011)
01/21/2011	<u>34</u>	193	ORDER PRELIMINARY APPROVING SETTLEMENT AND CERTIFICATION OF CLASS as set out in order. Class members must submit a claim form by 4/18/2011. A Fairness Hearing is set for 5/18/2011 02:00 PM in US Courthouse, Courtroom 3A, 113 St. Joseph Street, Mobile, AL 36602 before Magistrate Judge William E. Cassady. The parties have until 5/28/11 to file a motion for final approval of the settlement. Signed by Magistrate Judge William E. Cassady on 1/21/2011. (Attachments: # <u>1</u> Exhibit A) (srr) (Entered: 01/21/2011)

			01/21/2011)	
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**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION**

**SUSSI J. DALTON, individually
and on behalf of all similarly situated
individuals,**

Plaintiffs,

vs.

CARDWORKS SERVICING

Defendant.

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Case No.: 09-563

CLASS ACTION

COMPLAINT

COMES NOW the Plaintiff, Sussi J. Dalton, (hereafter the "Plaintiff") by counsel, and for her complaint against the above-named Defendant, alleges as follows:

JURISDICTION AND VENUE

1. The jurisdiction of the Court is invoked pursuant to 15 U.S.C. § 1692k(d), and 28 U.S.C. 1331. Venue is proper in this District because the acts and transactions occurred here and all the parties reside or transact business here.

PRELIMINARY STATEMENT

2. This is an action for statutory damages, costs and attorney's fees brought pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 ("FDCPA"). Plaintiff brings this action individually and on behalf of all others similarly situated to enjoin Defendant's conduct and recover damages by reason of the Defendant's violation of the FDCPA. The violating actions addressed in this Complaint stem from attempts to collect a debt without providing the requisite notice of the consumer's right to dispute the debt.

PARTIES

3. The Plaintiff is a natural person and resident of Dauphin Island, Alabama. She is a "consumer" as defined by 15 U.S.C. § 1692a(3).

4. Defendant Cardworks Servicing ("CS") is a corporation which is, upon information and belief, incorporated under the laws of the state of Delaware and has its principal place of business in the state of New York. For all relevant times, CS was engaged in business within the State of Alabama, including the collection of debts. CS is regularly engaged in the practice of debt collection.

5. CS sends collection letters and places collection calls as a regular part of its business.

6. The mails and interstate wire communications are used to conduct the business of CS.

7. CS is a debt collector as defined in the FDCPA.

FACTS

8. On or about August 31st, 2008, Defendant initially contacted Plaintiff by the use of a collection letter demanding payment in the amount of \$1,339.60. The creditor was identified as "Merrick Bank" with an account number listed on the letter, account number 4120613059058955.

9. On CS's August 31st, 2008 initial communication there was the following language located at the bottom of the front page:

IMPORTANT NOTIFICATION REQUIRED BY FEDERAL LAW

This is an attempt to collect a debt. Any information obtained will be used for that purpose. This communication is from a debt collector. Unless you notify this office in writing within 30 days after receiving this notice that you dispute the

validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, this office will: (i) Obtain verification of the debt or obtain a copy of a judgement and mail you a copy of such verification or judgement. (ii) Provide you with the name and address of the original creditor, if different from the current creditor.

10. 15 U.S.C. § 1692g(a) states that a consumer can within 30 days after receipt of the debt collectors notice dispute the validity of the debt.

11. The statute, specifically 15 U.S.C. § 1692g(a)(3) sets forth no requirements as to the manner in which a consumer can dispute the validity of the debt.

12. The language set forth in CS's letter to the Plaintiff states the consumer may only "notify this office in writing", and allows for no other methods of communication, such as a phone call or facsimile by the consumer to dispute the validity of the debt.

13. The notice was inaccurate and misleading and does not comply with the requirements set forth under 15 U.S.C. § 1692g(a).

14. The August 18, 2008 collection letter was the initial contact with Plaintiff and Plaintiff received no other communication or written notice within five days that complied with 15 U.S.C. § 1692g .

COUNT ONE
(FDCPA VIOLATIONS)

15. Plaintiff realleges and incorporates all of the preceding paragraphs as if fully set out herein.

16. This is a claim asserted against CS for violations of the FDCPA.

17. Defendant CS is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6).

18. Defendant has violated the FDCPA in connection with its attempts to collect the

account against Plaintiff. Defendant's violations include, but are not limited to, failing to comply with the requirements of 15 U.S.C. 1692g(a).

15. As a result of its violations of the FDCPA, CS is liable to Plaintiff for declaratory judgment that CS violated the FDCPA, actual damages, statutory damages, plus costs and attorney's fees.

WHEREFORE, Plaintiff respectfully requests that judgment be entered against Defendant CS for the following:

- A. Statutory damages pursuant to 15 U.S.C. 1692k;
- B. Declaratory judgment that Defendant's conduct violated the FDCPA;
- C. Costs and reasonable attorneys fees pursuant to 15 U.S.C. § 1692k; and
- D. Such other and further relief as this Court deems just and proper, the premises considered.

COUNT TWO
(CLASS ACTION ALLEGATIONS)

16. Plaintiff realleges and adopts all of the relevant foregoing paragraphs contained in this complaint.

17. Plaintiff prays that this court will certify this action as a class action as provided by Federal Rules of Civil Procedure, Rule 23, and realleges and incorporates by reference the allegations and counts of complaint on behalf of all those persons hereinafter described belonging to the class or any sub-class therein.

18. Plaintiff brings this action on behalf of himself and all members of the class composed of persons who have been were subjected to collection activity by CS that was in violation of the FDCPA of the type(s) involved in this transaction and who are entitled to some

or all of the relief requested herein.

19. Plaintiff avers that the class is so numerous, that joinder of all members is impractical. Plaintiff further avers that there are questions of law or fact common to the class relating to the conduct of the defendant regarding said claims. Plaintiff further avers that their claims or defenses, as representative of the class, are typical of the class. Plaintiff further avers that in a representative capacity he will fairly and adequately protect the interest of the class.

20. Each class member has, or has been subjected to collection activity in violation of the FDCPA.

21. Names and addresses of class members are presently unknown to plaintiff, but can be readily ascertained from the defendant's business records.

22. Common or similar issues of law and fact predominate over individual issues. These common issues include, but are not limited to the following:

- a. Whether the form collection letter sent to Plaintiff and members of the class violated the FDCPA by failing to include statements regarding the right to dispute the debt and request verification of the debt;
- b. What is the appropriate remedy for CS's violation of the FDCPA

23. Proof of common facts and legal doctrines by the representative plaintiff consumer will determine the claims of each member of the class.

24. This class action proceeding will provide a practical basis for the determination of all interest of the parties, prevent inconsistent adjudications, maximize judicial economy, and is superior to all other available methods of fair and efficient adjudications of the controversy.

25. The named representative's claims are typical and representative of the class and sub-class claims.

26. It is and was the practice of CS to attempt debt collection that was in violation of the FDCPA as stated in the above.

WHEREFORE, Plaintiff prays that this court will certify this as a class action, and award the members of the class and any sub-class described herein the remedies provided for in 15 U.S.C. § 1692k.

COUNT THREE
(DECLARATORY JUDGMENT)

27. Plaintiff realleges and adopts by reference all of the foregoing relevant paragraphs in this complaint.

28. Plaintiff and the members of the class bring this action in this count pursuant to Rule 57 of the Federal Rules of Civil Procedure in that an actual controversy exists between the parties concerning their rights under the FDCPA.


WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated pray as follows:

- a. That this court determine that this cause may proceed as a class action, that Plaintiff be appointed as class representative, that the undersigned be appointed as the attorney for the class.
- b. That this court award Plaintiff and the members of the class statutory damages for all losses incurred by them.
- c. That the cost of prosecution and reasonable attorneys' fees be awarded to the attorney for Plaintiff and the Plaintiff's Classes.
- d. That this court issues a temporary and permanent injunction restraining the defendant, their agents or employees from their practices alleged until further

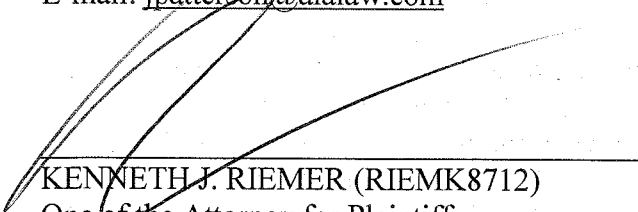
order of Court.

- e. That this court determines the rights of the parties and directs CS to cease illegal collection activity.
- f. That this court enjoin defendant from destroying or altering books or records concerning or in any way relating to the practices as stated above.
- g. For such other and further relief as this court deems just and equitable.
- h. That defendant be required to pay punitive damages in an amount to be determined, in addition to statutory damages.

TRIAL BY JURY IS DEMANDED.



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09-563-C-C

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

CC

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS SUSSI J. DALTON	DEFENDANTS CARDWORKS SERVICES, LLC
(b) County of Residence of First Listed Plaintiff <u>DAUPHIN ISLAND</u> (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant <u>ALABAMA</u> (IN U.S. PLAINTIFF CASES ONLY)
(c) Attorney's (Firm Name, Address, and Telephone Number) James D. Patterson, Law Offices of Earl P. Underwood, Jr. PO Box 969 Fairhope, AL 36533-0969 251-990-5558	NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																		
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">Citizen of This State</th> <th style="text-align: center;">PTF <input checked="" type="checkbox"/> 1</th> <th style="text-align: center;">DEF <input type="checkbox"/> 1</th> <th style="text-align: left;">Incorporated or Principal Place of Business in This State</th> <th style="text-align: center;">PTF <input type="checkbox"/> 4</th> <th style="text-align: center;">DEF <input type="checkbox"/> 4</th> </tr> <tr> <th style="text-align: left;">Citizen of Another State</th> <th style="text-align: center;"><input type="checkbox"/> 2</th> <th style="text-align: center;"><input type="checkbox"/> 2</th> <th style="text-align: left;">Incorporated and Principal Place of Business in Another State</th> <th style="text-align: center;"><input type="checkbox"/> 5</th> <th style="text-align: center;"><input checked="" type="checkbox"/> 5</th> </tr> <tr> <th style="text-align: left;">Citizen or Subject of a Foreign Country</th> <th style="text-align: center;"><input type="checkbox"/> 3</th> <th style="text-align: center;"><input type="checkbox"/> 3</th> <th style="text-align: left;">Foreign Nation</th> <th style="text-align: center;"><input type="checkbox"/> 6</th> <th style="text-align: center;"><input type="checkbox"/> 6</th> </tr> </table>	Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition

V. ORIGIN (Place an "X" in One Box Only)							
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>Fair Debt Collection Practices Act</u> Brief description of cause: <u>Violation of FDCPA</u>
----------------------------	---

VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
-------------------------------------	---

VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE <u>[Signature]</u> DOCKET NUMBER _____
-------------------------------------	--

DATE 08/28/2009	SIGNATURE OF ATTORNEY OF RECORD <u>[Signature]</u>
--------------------	---

FOR OFFICE USE ONLY				
RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff

v.

Defendant

)
)
)
)
)

Civil Action No. _____

Summons in a Civil Action

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within ____ days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, whose name and address are:

If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Name of clerk of court

Date: _____

Deputy clerk's signature

(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3).)

Proof of Service

I declare under penalty of perjury that I served the summons and complaint in this case on _____,
by:

- (1) personally delivering a copy of each to the individual at this place, _____;
_____; or
- (2) leaving a copy of each at the individual's dwelling or usual place of abode with _____
who resides there and is of suitable age and discretion; or
- (3) delivering a copy of each to an agent authorized by appointment or by law to receive it whose name is
_____; or
- (4) returning the summons unexecuted to the court clerk on _____; or
- (5) other (*specify*) _____

_____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

Date: _____

Server's signature

Printed name and title

Server's address

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff

v.

Defendant)
)
)
)
)

Civil Action No. _____

Summons in a Civil ActionTo: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within ____ days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, whose name and address are:

If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CHARLES R. DIARD, JR.

Name of clerk of court

Date: August 31, 2009Maria Payne

Deputy clerk's signature

(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3).)

Proof of Service

I declare under penalty of perjury that I served the summons and complaint in this case on _____,
by:

- (1) personally delivering a copy of each to the individual at this place, _____;
_____ ; or
- (2) leaving a copy of each at the individual's dwelling or usual place of abode with _____
who resides there and is of suitable age and discretion; or
- (3) delivering a copy of each to an agent authorized by appointment or by law to receive it whose name is
_____ ; or
- (4) returning the summons unexecuted to the court clerk on _____ ; or
- (5) other (*specify*) _____

_____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

Date: _____

Server's signature

Printed name and title

Server's address

Court Name: Southern District of Alabama
Division: 1
Receipt Number: 46031015479
Cashier ID: Kennedy
Transaction Date: 08/31/2009
Payer Name: Ken Riener

CIVIL FILING FEE
For: Ken Riener
Amount: \$350.00

CHECK
Remitter: Ken Riener
Check/Money Order Num: 1316
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

cv 09-563

AO 440 (Rev. 04/08) Civil Summons

UNITED STATES DISTRICT COURT

for the

Southern District of Alabama

Sussi J. Dalton

Plaintiff

v.

CardWorks Servicing, LLC

Defendant

Civil Action No. CV-09-563

Summons in a Civil Action

To: (Defendant's name and address)

CardWorks Servicing
c/o CSC Lawyers Incorporating Srv Inc
150 S Perry Street
Montgomery, AL 36104

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, whose name and address are:

James D. Patterson
Law Offices of Earl P. Underwood
P. O. Box 969
Fairhope, AL 36533

If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CHARLES R. DIARD, JR.

Name of clerk of court

Date: August 31, 2009

Maria Payne

Deputy clerk's signature

(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3).)

AO 440 (Rev. 04/08) Civil Summons (Page 2)

Proof of Service

I declare under penalty of perjury that I served the summons and complaint in this case on _____,
by:

- (1) personally delivering a copy of each to the individual at this place, _____; or
- (2) leaving a copy of each at the individual's dwelling or usual place of abode with _____
who resides there and is of suitable age and discretion; or
- (3) delivering a copy of each to an agent authorized by appointment or by law to receive it whose name is
_____; or
- (4) returning the summons unexecuted to the court clerk on _____; or
- (5) other (specify) _____

_____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

Date: _____

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none">Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.Print your name and address on the reverse so that we can return the card to you.Attach this card to the back of the mailpiece, or on the front if space permits.	<p>A. Signature <u>J. S. Bellamy</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Receiver (Printed Name) <u>JAMES S. BELLAMY</u> C. Date of Delivery <u>9-3-09</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p><u>CardWorks Servicing</u> <u>C/O CSC Lawyers</u> <u>Incorporating LLC</u> <u>150 S Perry St.</u> <u>Montgomery, AL</u> <u>36104</u></p>	<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p> <p><u>7008 1140 0004 4272 6044</u></p>	

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DISTRICT

SUSSIE J. DALTON,

*

Plaintiff,

*

vs.

*

Case No.: 1:09-cv-00563-CB-C

CARDWORKS SERVICING, LLC,

*

Defendant.

*

UNOPPOSED MOTION FOR EXTENSION OF FOURTEEN DAYS
WITHIN WHICH TO ANSWER OR OTHERWISE RESPOND TO COMPLAINT

Defendant CardWorks Servicing, LLC, incorrectly named in the Complaint as “CardWorks Servicing,” moves the Court for an additional fourteen (14) days within which to answer or otherwise respond to the Complaint filed by Plaintiff and as grounds sets forth the following:

1. This motion and the relief sought in it is unopposed.
2. The Complaint states that the case involves a violation of the Fair Debt Collection Practices Act (“FDCPA”) and requests that the Court certify the action as a class action.
3. The additional time requested is needed in order to adequately respond to the Complaint.

s/James B. Newman
JAMES B. NEWMAN (NEWMJ8049)
Attorney for Defendant CardWorks
Servicing, LLC

OF COUNSEL:
HELMSING, LEACH, HERLONG,
NEWMAN & ROUSE
POST OFFICE BOX 2767
MOBILE, ALABAMA 36652
(251) 432-5521
Email: jbn@helmsinglaw.com

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Earl P. Underwood, Jr.
James D. Patterson
21 South Section Street
Fairhope, Alabama 36533

Kenneth J. Riemer
Post Office Box 1206
Mobile, Alabama 36633

this 24th day of September, 2009.

s/James B. Newman
OF COUNSEL

Doc 218152

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DISTRICT

SUSSIE J. DALTON,

*

Plaintiff,

*

vs.

*

Case No.: 1:09-cv-00563-CB-C

CARDWORKS SERVICING, LLC,

*

Defendant.

*

DISCLOSURE STATEMENT PURSUANT
TO LOCAL RULE 3.4 AND FRCP 7.1

CardWorks Servicing, LLC has no parents, subsidiaries or affiliates which have issued shares or debt securities to the public.

s/James B. Newman
JAMES B. NEWMAN (NEWMJ8049)
Attorney for Defendant CardWorks
Servicing, LLC

OF COUNSEL:
HELMSING, LEACH, HERLONG,
NEWMAN & ROUSE
POST OFFICE BOX 2767
MOBILE, ALABAMA 36652
(251) 432-5521
Email: jbn@helmsinglaw.com

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Earl P. Underwood, Jr.
James D. Patterson
21 South Section Street
Fairhope, Alabama 36533

Kenneth J. Riemer
Post Office Box 1206
Mobile, Alabama 36633

this 24th day of September, 2009.

s/James B. Newman
OF COUNSEL

Doc 218222

Southern District of Alabama

Notice of Electronic Filing

The following transaction was entered on 9/29/2009 at 11:33 AM CDT and filed on 9/29/2009

Case Name: Dalton v. Cardworks Services, LLC

Case Number: 1:09-cv-563

Filer:

Document Number: 8(No document attached)

Docket Text:

ENDORSED ORDER granting [6] Motion for Extension of Time to Answer; Answer due from Cardworks Services, LLC on 10/7/2009. Signed by Senior Judge Charles R. Butler, Jr on September 29, 2009. (aen)

1:09-cv-563 Notice has been electronically mailed to:

James B. Newman jbn@helmsinglaw.com, cer@helmsinglaw.com, elm@helmsinglaw.com, mjb@helmsinglaw.com

Kenneth J. Riemer kjr@alaconsumerlaw.com, clw@alaconsumerlaw.com

Earl P. Underwood epunderwood@gmail.com, dclangford@mindspring.com, scarlson@alalaw.com

James Donnie Patterson jpatterson@alalaw.com, dclangford@mindspring.com, scarlson@alalaw.com

1:09-cv-563 Notice has been delivered by other means to:

Southern District of Alabama

Notice of Electronic Filing

The following transaction was entered on 10/1/2009 at 1:29 PM CDT and filed on 10/1/2009

Case Name: Dalton v. Cardworks Services, LLC

Case Number: 1:09-cv-563

Filer:

Document Number: 9(No document attached)

Docket Text:

Order. A review of the disclosure statement presented by defendant CardWorks Servicing, LLC (Doc. 7), pursuant to Local Rule 3.4, has been completed. That review has not revealed any reason to believe that there are any actual or potential conflicts of interest that would require disqualification or recusal in this action. Signed by Magistrate Judge William E. Cassady on 10-1-09. (Cassady, William)

1:09-cv-563 Notice has been electronically mailed to:

James B. Newman jbn@helmsinglaw.com, cer@helmsinglaw.com, elm@helmsinglaw.com, mjb@helmsinglaw.com

Kenneth J. Riemer kjr@alaconsumerlaw.com, clw@alaconsumerlaw.com

Earl P. Underwood epunderwood@gmail.com, dclangford@mindspring.com, scarlson@alalaw.com

James Donnie Patterson jpatterson@alalaw.com, dclangford@mindspring.com, scarlson@alalaw.com

1:09-cv-563 Notice has been delivered by other means to:

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DISTRICT

SUSSIE J. DALTON,

*

Plaintiff,

*

vs.

* Case No.: 1:09-cv-00563-CB-C

CARDWORKS SERVICING,

*

Defendant.

*

A N S W E R

Defendant CardWorks Servicing, LLC, sued herein as “CardWorks Servicing” (“CardWorks”), by and through its attorneys, Helmsing, Leach, Herlong, Newman & Rouse, P.C., responds to the Complaint of Plaintiff Sussi J. Dalton, as follows:

JURISDICTION AND VENUE

1. CardWorks does not respond to the allegations set forth within Paragraph 1 of the Complaint, as they set forth a legal conclusion to which no response is required.

PRELIMINARY STATEMENT

2. CardWorks denies the allegations set forth within Paragraph 2 of the Complaint to the extent that they allege that CardWorks has committed any violation of the Fair Debt Collection Practices Act (“FDCPA”) under the facts alleged in this action.

PARTIES

3. CardWorks denies knowledge or information sufficient to form a belief with regard to the allegations set forth within Paragraph 3 of the Complaint to the extent

they allege that “Plaintiff is a natural person and a resident of Dauphin Island, Alabama.” CardWorks does not respond to the remaining allegations set forth within Paragraph 3 of the Complaint as they set forth a legal conclusion to which no response is necessary.

4. CardWorks admits the allegations set forth within Paragraph 4 of the Complaint.

5. CardWorks admits the allegations set forth within Paragraph 5 of the Complaint.

6. CardWorks admits the allegations set forth within Paragraph 6 of the Complaint.

7. CardWorks does not respond to the allegations set forth within Paragraph 7 of the Complaint as they set forth a legal conclusion to which no response is required.

FACTS

8. CardWorks denies the allegations set forth in this paragraph.

9. CardWorks denies the allegations set forth in this paragraph.

10. CardWorks does not respond to the allegations set forth within Paragraph 10 of the Complaint as they set forth a legal conclusion to which no response is required.

11. CardWorks does not respond to the allegations set forth within Paragraph 11 of the Complaint as they set forth a legal conclusion to which no response is required.

12. CardWorks admits that the language set forth above states what that language states; however, CardWorks denies the characterization of the language as set forth in this paragraph.

13. CardWorks denies the allegations set forth within Paragraph 13 of the Complaint.

14. CardWorks denies the allegations set forth within Paragraph 14 of the Complaint.

COUNT ONE

15. CardWorks repeats each and every response contained within Paragraphs 1 through 14 of this answer as if set forth in full herein.

16. No response is required to this allegation. CardWorks denies any violation of the FDCPA.

17. CardWorks does not respond to the allegations set forth within Paragraph 17 of the Complaint as they set forth a legal conclusion to which no response is required.

18. CardWorks denies the allegations set forth within Paragraph 18 of the Complaint.

19 (misnumbered in the Complaint as 15). CardWorks denies the allegations set forth within Paragraph 19 of the Complaint.

COUNT TWO

20 (misnumbered in the Complaint as 16). CardWorks repeats each and every response contained within Paragraphs 1 through 19 of this answer as if set forth in full herein.

21 (misnumbered in the Complaint as 17). CardWorks repeats each and every response to the allegations and counts of the Complaint. CardWorks denies that this case is appropriate for class action treatment.

22 (misnumbered in the Complaint as 18). CardWorks denies that this case is appropriate for class action treatment. CardWorks further denies it violated the FDCPA.

23 (misnumbered in the Complaint as 19). CardWorks denies that this case is appropriate for class action treatment. In addition, the allegations in this paragraph state a legal conclusion to which no response is required.

24 (misnumbered in the Complaint as 20). CardWorks denies that it has subjected any purported or alleged class member to activity in violation of the FDCPA. CardWorks further denies that this case is appropriate for class action treatment.

25 (misnumbered in the Complaint as 21). CardWorks denies that this case is appropriate for class action treatment. In addition, the allegations in this paragraph state a legal conclusion to which no response is required.

26 (misnumbered in the Complaint as 22). CardWorks denies that this case is appropriate for class action treatment. There was no violation by CardWorks of the FDCPA to the extent that is implied by sub-paragraph (b). In addition, the allegations in this paragraph state a legal conclusion to which no response is required.

27 (misnumbered in the Complaint as 23). CardWorks denies that this case is appropriate for class action treatment. In addition, the allegations in this paragraph state a legal conclusion to which no response is required.

28 (misnumbered in the Complaint as 24). CardWorks denies that this case is appropriate for class action treatment. In addition, the allegations in this paragraph state a legal conclusion to which no response is required.

29 (misnumbered in the Complaint as 25). CardWorks denies that this case is appropriate for class action treatment. In addition, the allegations in this paragraph state a legal conclusion to which no response is required.

30 (misnumbered in the Complaint as 26). CardWorks denies the allegations set forth within this paragraph.

COUNT THREE

31. (misnumbered in the Complaint as 27.) CardWorks repeats each and every response contained within Paragraphs 1 through 30 of this answer as if set forth in full herein.

32. (misnumbered in the Complaint as 28.) CardWorks denies that Plaintiff is entitled to declaratory relief as set forth in this paragraph.

As to all allegations made in the Complaint, CardWorks denies those not specifically admitted.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE Failure to State a Claim

1. The Complaint fails to state a claim upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE Bona Fide Error Under 15 U.S.C. § 1692k(c)

2. To the extent the allegations of the complaint give rise to a cause of action under the Fair Debt Collection Practices Act, such violation was not intentional.

3. To the extent the allegations of the complaint give rise to a cause of action under the Fair Debt Collection Practices Act, such violation was the result of a bona fide error.

4. CardWorks maintains procedures reasonably adapted to avoid such errors.

5. Accordingly, CardWorks may not be held liable for any violation of the Fair Debt Collection Practices Act under the facts alleged in this action.

WHEREFORE, it is respectfully requested that this Court enter judgment: (i) dismissing the Complaint in this action in its entirety; (ii) awarding CardWorks recovery of its costs associated with this action ,including but not limited to reasonable attorneys' fees; and (iii) granting such further relief as this Court deems just and proper.

s/ James B. Newman
JAMES B. NEWMAN (NEWMJ8049)
Attorney for Defendant CardWorks
Servicing, LLC

OF COUNSEL:
HELMSING, LEACH, HERLONG,
NEWMAN & ROUSE
POST OFFICE BOX 2767
MOBILE, ALABAMA 36652
(251) 432-5521
Email: jbn@helmsinglaw.com

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Earl P. Underwood, Jr.
James D. Patterson
21 South Section Street
Fairhope, Alabama 36533

Kenneth J. Riemer
Post Office Box 1206
Mobile, Alabama 36633

this 7th day of October, 2009.

s/ James B. Newman
OF COUNSEL

Doc 219537

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SUSSI J. DALTON

Plaintiff,

vs.

CARDWORKS SERVICES, LL.

Defendant.

:
:
:
:
:
:
:
:
:
:

CIVIL ACTION NO. 09-00563-CB-C

PRELIMINARY SCHEDULING ORDER

In preparation for the entry of a Fed.R.Civ.P. 16(b) scheduling order, the parties shall comply with the following schedule pursuant to Fed.R.Civ.P. 26(f), and Local Rule 26.1:

A. Meeting of the Parties; Report.

1. The parties, including pro se parties, are ORDERED to meet and file a report pursuant to Fed.R.Civ.P. 26(f) as soon as practicable but not later than **november 23, 2009.**

2. The parties may, if the offices of their principal counsel are not within 100 miles of one another, conduct the meeting by telephone.

3. The report of the parties shall conform to this Court's format, a copy of which is attached to this order. The report is to include Plaintiff's brief narrative statement of the facts and the cause of action stated in each count, and Defendant's brief narrative statement of the facts and defenses, including affirmative defenses, stating the theory of each defense. **In other words, the parties are to fully state their present respective positions in plain English, given what they know about the case at this time.** This is not to be simply a restatement of the complaint and answer.

B. Rule 26 Disclosures.

1. Required Disclosures.

a. Initial Disclosures. Except as otherwise ordered by the Court, a party shall, without awaiting a discovery request, provide the information described in Fed.R.Civ.P. 26(a)(1)(A-D) **not later than twenty (20) days after the meeting of the parties.**

2. Filing. Except as otherwise ordered by the Court, disclosures under Fed.R.Civ.P. 26(a)(1), (2) and (3) shall be filed with the Court only when, and to the extent, ordered by the Court or when needed by a party in connection with a motion (or response thereto), or for use at trial.

C. Commencement of Discovery. Except as otherwise ordered by the Court:

1. Formal discovery under Fed.R.Civ.P. 30, 31, 33, 34, and 36 may not be commenced before the meeting of the parties except in the following actions:

- (a) Actions in which a temporary restraining order or preliminary injunction is sought;
- (b) Actions in which discovery is needed to resolve a preliminary motion such as an objection to personal jurisdiction or venue.

ORDERED this 8th day of October, 2009.

WILLIAM E. CASSADY
UNITED STATES MAGISTRATE JUDGE

By: /s/Angela Kraver
Deputy Clerk

Local Form For Report of Parties' Planning Meeting

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
_____ DIVISION**

	:	
Plaintiff,	:	
vs.		: CIVIL ACTION _____
	:	
Defendant.	:	

REPORT OF PARTIES' PLANNING MEETING

Pursuant to Fed.R.Civ.P. 26(f), a meeting was held on (date) at (place) and was attended by:

(name) for plaintiff(s)
 (name) for defendant(s) (party name)
 (name) for defendant(s) (party name)

The parties [request] [do not request] a conference with the court before entry of the scheduling order.

1. Plaintiff's brief narrative statement of the facts and the cause of action stated in each count, and Defendant's brief narrative statement of the facts and defenses, including affirmative defenses, stating the theory of each defense. **In other words, the parties are to fully state their present respective positions in plain English, given what they know about the case at this time.** This is not to be simply a restatement of the complaint and answer.

2. This [jury] [non-jury] action should be ready for trial by (date) and at this time is expected to take approximately (length of time in days excluding jury selection).

3. The parties request a pretrial conference in (month and year).

4. Discovery Plan. The parties jointly propose to the court the following discovery plan: [Use separate paragraphs or subparagraphs as necessary if parties disagree.]
 Discovery will be needed on the following subjects: (brief description of subjects on which discovery will be needed).

All discovery commenced in time to be completed by (date). [Discovery on (issue for early discovery) to be completed by (date).]

5. Initial Disclosures. The parties [have exchanged] [will exchange by (date)] the information required by Fed.R.Civ.P. 26(a)(1).

6. The parties request until (date) to join additional parties and amend the pleadings.
7. Reports from retained experts under Rule 26(a)(2) due:
from plaintiff(s) by (date).
from defendant(s) by (date).
8. Pretrial Disclosures. Final lists of witnesses and exhibits under Rule 26(a)(3) due by (date).
9. Discovery Limits.
Maximum of ____ interrogatories by each party to any other party. Responses due ____ days after service.
Maximum of ____ depositions by plaintiff(s) and ____ by defendant(s). Each deposition limited to maximum of ____ hours unless extended by agreement of parties.
Maximum of ____ requests for admission by each party to any other party. Responses due ____ days after service.
Maximum of ____ requests for production of documents by each party to any other party. Responses due ____ days after service.
10. All potentially dispositive motions filed by (date).
11. Settlement [is likely] [is unlikely] [cannot be evaluated prior to (date)] [may be enhanced by use of the following alternative dispute resolution procedure: ____].
12. [Other matters.]

Date: _____

Signature¹

Name
Counsel for Plaintiff
Address
Telephone Number
Email

Signature¹

Name
Counsel for Defendant
Address
Telephone Number
Email

¹Signatures may be electronically affixed (i.e. s/Judith Attorney) and, with consent so stated after the signature, counsel may electronically sign for other counsel (i.e. s/John Attorney, by consent).

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA**

**NOTICE OF RIGHT TO CONSENT TO THE EXERCISE OF CIVIL
JURISDICTION BY A MAGISTRATE JUDGE AND APPEAL OPTION**

ACTIVE JUDGES:	Callie V. S. Granade-CG; William H. Steele-WS; Kristi D. DuBose-KD
SENIOR JUDGE:	Charles R. Butler, Jr.-CB
MAGISTRATE JUDGES:	William E. Cassady-C; Bert W. Milling, Jr.-M; Sonja F. Bivins-B, Katherine P. Nelson-N

The policy of this court is to assign each newly filed civil action a number accompanied by letter suffixes which reflect the initial(s) of the assigned District Judge followed by the initials of the assigned Magistrate Judge (i.e. CIVIL ACTION 06-0001-CG-C would be assigned to Judge Granade and Magistrate Judge Cassady).

In accordance with the provisions of 28 U.S.C., Sec. 636(c), the United States Magistrate Judges of this district, in addition to their other duties, upon the consent of all parties in a civil case, may conduct any or all proceedings including a jury trial or non-jury trial, and order the entry of a final judgment.

Your decision to consent, or not, to the referral of your case to a United States Magistrate Judge must be entirely voluntary, as provided in Rule 73(b), F.R. Civ. P.

Pursuant to the provisions of 28 U.S.C., Sec. 636(c)(3), any appeal from a judgment entered by a Magistrate Judge shall be taken directly to the United States Court of Appeals for the Eleventh Circuit in the same manner as an appeal from any other judgment of the district court.

A copy of the court's form *Consent to Jurisdiction by a United States Magistrate Judge* is attached and is also available from the clerk of court.

**CHARLES R. DIARD, JR., CLERK
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SUSSI J DALTON, individually)	
and on behalf of all similarly situated)	
individuals,)	
)	
PLAINTIFF,)	
	)	CIVIL ACTION NO.:
vs.	)	09-00563-CB-C
)	
CARDWORK SERVICING, LLC.)	
)	
DEFENDANT.	)	CLASS ACTION

REPORT OF PARTIES' PLANNING MEETING

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, the following attorneys have conferred regarding proposed deadlines in this case and submit the following joint report:

James D. Patterson: Representing the Plaintiff.

James B. Newman: Representing the Defendant.

The parties do not request a conference with the Court before entry of the scheduling order.

1. Nature of the Case:

Plaintiff's Summary:

This is a class action on behalf of a class consisting of all persons who received letters from Defendant which failed to comply with the requirements of 15 U.S.C. 1692g(a).

Defendant's Summary:

Plaintiffs' claims fail as a matter of law. Even assuming the allegations of the complaint to be true, they do not state a cause of action under 15 U.S.C. 1692g(a). Moreover, any alleged

violation of 15 U.S.C. 1692g(a) is barred by the “bona fide error” defense, provided by the express language contained within section 1692(k)(b)(2)(c) of the statute.

2. This jury action should be ready for class certification hearing within eight months. When the case will be ready for jury trial will depend on the Court’s decision on class certification. If a class is certified, the parties expect a trial to take less than 1 week. If the class is not certified, the trial is expected to take 1-2 days.

3. The parties request a pretrial conference 30 days before trial.

4. **Discovery Plan:**

Plaintiff’s Position: Prior to a ruling on class certification, the parties will focus their discovery upon discovery relating to the elements of Rule 23 and to the merits of the Plaintiffs’ claims. Initial disclosures will be due 21 days after this report is signed by the parties. Discovery regarding the claims of the named Plaintiffs may proceed during class discovery.

Defendant’s Position: Defendant agrees that the parties will focus their discovery efforts on the merits of Plaintiff’s claims under the Fair Debt Collection Practices Act, prior to engaging in class discovery.

The parties propose the following plan for discovery:

(a) **Depositions:** The parties agree to a maximum of 7 depositions for Plaintiffs and 7 depositions for Defendant, each directed toward any other party with a maximum time limit of 7 hours per deposition, unless extended by agreement of the parties, pursuant to the standards set forth in the Federal Rules of Civil Procedure.

(b) **Interrogatories:** The parties agree to a maximum of 30 by Plaintiffs, 30 by each of the Defendant, including subparts, directed toward any

other party, to be answered within 30 days of service.

(c) **Requests for admission:** The parties agree to a maximum of 25 by Plaintiffs, 25 by the Defendant, including subparts, directed toward any party, to be answered within 30 days of service.

(d) **Requests for Production:** The parties agree to a maximum of 30 by Plaintiffs, 30 by each of the Defendant, directed toward any other party, to be answered within 30 days of service.

(e) **Parties:** The parties agree that the Plaintiffs shall have 120 days from the date this report is signed to join additional parties. Defendant shall have 150 days from the date this report is signed to join additional parties.

(f) **Pleadings:** Plaintiffs shall have 120 days from the date this report is signed to amend the pleadings. Defendant shall have 150 days from the date this report is signed to amend the pleadings.

(g) **Class Certification Experts:** Plaintiffs shall identify any class certification expert and produce a copy of his or her report within 180 days from the date this report is signed. Defendant shall identify any class certification expert and produce a copy of his or her report within 45 days after Plaintiffs identify their class certification expert.

(h) **Class Certification Motion:** Any motion for class certification and supporting briefs and exhibits must be filed within 210 days from the date this report is signed. Defendant shall respond within 30 days of the filing of the motion for class certification. Plaintiffs' reply will be due 15 days thereafter.

(i) **Trial:** The parties request that the Court hold a scheduling

conference to discuss the remaining scheduling issues following a decision on the class certification issue, as this issue will have a significant effect on the amount of time necessary to prepare for and complete a trial. Within 30 days of a ruling on class certification, the parties should submit their proposal for the remainder of the schedule, including a trial date.

(j) The parties do not now know if a protective order will be necessary. It may become apparent that a protective order is needed to protect the disclosure of confidential, privileged, trade secret or proprietary information that should not be disclosed outside of this litigation. If that occurs, the parties will make a good faith attempt to agree to such an order before asking the Court to intervene.

5. Electronic Data:

Where relevant and responsive, the parties will produce photocopies and/or pdf versions of data that is maintained electronically. The parties agree to work together to agree upon the types of electronic data that should be preserved.

6. Electronic Service:

The parties agree that service of any document may be effected by email, but that deadlines for responding to documents served via email will be calculated as if such documents had been served by U.S. Mail.

7. Settlement:

The parties agree that the possibility of settlement cannot be evaluated at this early juncture.

8. Other Items.

(a) The parties do not request a conference with the Court before entry of the scheduling order.

(b) Though the parties do not anticipate significant electronic discovery issues, the disclosure or discovery of electronically stored information (ESI) should be handled as follows:

i. The production of ESI should be done in .pdf format.

ii. If either party withholds information claiming a privilege or protection as trial preparation material, that party must make the claim expressly and shall describe the nature of the documents, communications or things not produced or disclosed which will enable the other party to assess the applicability of the privilege or protection.

iii. The parties agree to implement the provisions of Rule 26(b)(5)(B) to protect any information produced in discovery that is subject to a claim of privilege or of protection as trial preparation material.

The attorneys for the parties jointly prepared this Report of the Parties' Planning Meeting.

Respectfully submitted this, the 23rd day of November 2009.

s/ James D. Patterson ¹

JAMES D. PATTERSON (PATTJ6485)
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Facsimile : (251) 990-0626
jpatterson@alalaw.com

¹ Attorney James D. Patterson has given his permission for his signature to be affixed to this document for filing with the Court.

s/ James B. Newman
JAMES B. NEWMAN (NEWMJ8049)
Attorney for Defendant CardWorks Servicing, LLC

OF COUNSEL:
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NEWMAN & ROUSE
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Doc 224811

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SUSSI J. DALTON, individually	:	
and on behalf of all similarly situated	:	
individuals,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	09-0563-CB-C
	:	
CARDWORK SERVICING, LLC.,	:	
	:	
Defendant.	:	

RULE 16(b) SCHEDULING ORDER

After consideration of the Fed.R.Civ.P. 26(f) report (Doc. 12), and the pleadings of the parties, the following scheduling order is entered pursuant to Fed.R.Civ.P. 16(b):

1. **ISSUES SUBJECT TO DISCOVERY.** This action is brought as a potential class action pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.* The discovery issues will involve matters relevant to the class certification motion and the merits of the plaintiff(s) claims, including issues related to the appropriate damages should liability be proven. Given the nature of this action and the potential need for the resolution of a class certification motion, discovery will proceed in two phases.

2. **DISCOVERY COMPLETION DATE.** The first phase of discovery is to be completed on or before **June 22, 2010.** The parties have agreed to use this period to explore the underlying bases for plaintiff's

claim and any factual support for certifying this action as a class action.¹ The parties shall supplement the present Rule 26(f) Report fourteen (14) days after the time for filing a motion for class certification has expired (June 23, 2010) or a ruling on any pending class certification motion is entered. The supplemental report shall provide a status of the action and additional scheduling needs existing at that time.

Requests for extension will be viewed with great disfavor and will not be considered except upon a showing (1) that extraordinary circumstances require it and (2) that the parties have diligently pursued discovery.

For all actions, “completed” means that all depositions have been taken; interrogatories, requests for admissions, and requests for production filed and responded to; physical inspections and testing concluded; physical and mental examinations concluded; and motions to compel filed.

3. INITIAL DISCLOSURES. The initial disclosures required by Fed.R.Civ.P. 26(a)(1) shall be exchanged not later than **January 12, 2010**.

4. AMENDMENTS TO PLEADINGS AND JOINDER OF PARTIES. Motions for leave to amend the pleadings and/or to join other parties must be filed by **April 2, 2010** by Plaintiff and **May 2, 2010** by Defendant.

5. EXPERT TESTIMONY. Expert reports related to class certification issues, as required by Fed.R.Civ.P. 26(a)(2)(B), shall be produced by plaintiff on or before **April 22, 2010** and by the defendant on or before **May 21, 2010**. Rebuttal evidence, authorized by Rule 26(a)(2)(C), shall be disclosed on or before **May 21, 2010** by the defendant and **June 21, 2010** by plaintiffs. **An expert’s deposition, if taken, must be noticed and**

¹ Even though the Court does limit the discovery issues during the first phase of discovery, such limits may be exceeded by agreement of the parties in order to avoid unnecessary expense and delay.

completed within thirty (30) days of the date on which the expert's report is disclosed.

All challenges to expert witnesses retained to give testimony with regard to a class action motion, including *Daubert* motions, must be included in the motion for class certification or response thereto. The motion for class certification is to be filed not later than June 22, 2010. Defendant's response will be due twenty-eight (28) days after service of the motion for class certification.

6. PRETRIAL DISCLOSURES. Reserved until the filing of a supplemental Rule 26(f) Report.

7. SUPPLEMENTATION. Supplementation of disclosures and responses as required by Fed.R.Civ.P. 26(e) is to be accomplished "in a timely manner", but not later than **June 29, 2010**.

8. FINAL PRETRIAL CONFERENCE. Reserved until the filing of a supplemental Rule 26(f) Report.

9. TRIAL DATE. Reserved until the filing of a supplemental Rule 26(f) Report.

10. DISCOVERY LIMITS. Discovery in the first phase of discovery is limited as follows:

a. Not more than **30** interrogatories, including all discrete subparts, may be served by each party upon any other party. Responses are due within thirty (30) days of service;

b. Not more than **7** depositions may be taken by each party, limited in duration as expressed by the parties in ¶ 4(a) of their Report;

c. Not more than **two set(s) of** requests for admissions may be served by each party upon any other party, limited to 25 requests, including all discrete subparts. Responses are due within thirty (30) days of service;

d. Not more than **two set(s) of** requests for production of documents may be served by each party upon any other party, limited to 30 requests, including all discrete subparts. Responses are due within thirty (30) days of service. **Subpoenas duces tecum to a party ordering such party to produce documents or things at trial shall not be used to circumvent the limitations placed on discovery.**

In applying these limits, all parties represented by the same counsel will be treated as a single party.

11. DISCOVERY MOTIONS. The following requirements pertain to discovery motions filed in this Court:

a. Conferencing by Counsel. The conferencing requirement of Fed.R.Civ.P. 26(c), 37(a)(1), and 37(d) will be strictly enforced. This requirement will also apply to a motion for physical and mental examination pursuant to Fed.R.Civ.P. 35(a) and a motion to determine sufficiency pursuant to Fed.R.Civ.P. 36(a). Any such motion not containing the required certification will be stricken.²

b. Time of Filing; Form. A motion for protective order pursuant to Fed.R.Civ.P. 26(c), a motion for physical and mental examination pursuant to Fed.R.Civ.P. 35(a), a motion to determine sufficiency pursuant to Fed.R.Civ.P. 36(a), and a motion to compel

² Based on the undersigned's experience with the different interpretations practitioners have given to the mandate that they make a good faith effort to resolve discovery disputes before bringing them before the Court, some guidance is deemed necessary. All three referenced sections of the Federal Rules of Civil Procedure employ the same language, that the motions be accompanied by a certification that the movant "has in good faith conferred or attempted to confer" with other affected parties or persons, prior to seeking the Court's help in resolving discovery disputes. In this context, confer means "to have a conference; compare and exchange ideas; meet for discussion; converse." *Webster's New World Dictionary* (College Edition, 1968). A conference is "[a] meeting of several persons for deliberation, for the interchange of opinion, or for the removal of differences or disputes." *Black's Law Dictionary*, Rev. 4th ed. (1968). Therefore, simply corresponding with opposing counsel is not considered a good-faith attempt to confer or have a conference to resolve discovery disputes.

pursuant to Fed.R.Civ.P. 37 shall be brought in a timely manner so as to allow sufficient time for the completion of discovery according to the schedule set by the Court. Any such motion shall quote in full (1) each interrogatory, request for admission or request for production to which the motion is addressed, or otherwise identify specifically and succinctly the discovery to which objection is taken or from which a protective order is sought, and (2) the response or the objection and grounds therefor, if any, as stated by the opposing party. Unless otherwise ordered by the Court, the complete transcripts or discovery papers are not to be filed with the Court unless the motion cannot be fairly decided without reference to the complete original.

c. Time for Responses. Unless within fourteen (14) days after the filing of a discovery motion the opposing party files a written response thereto, the opportunity to respond shall be deemed waived and the Court will act on the motion. Every party filing a response shall file with the response a memorandum of law, including citations of supporting authorities and any affidavits and other documents setting forth or evidencing facts on which their response is based.

d. Direct Referrals. Pursuant to local practice, all motions relating to discovery, which are filed prior to the final pretrial conference, will be referred directly to the undersigned for appropriate action. Motions filed after the final pretrial conference relating to the discovery process or seeking leave to engage in additional discovery will go to the trial judge initially.

e. Privilege or Protection of Trial Preparation Materials. The provisions of Fed.R.Civ.P. 26(b)(5) will be strictly enforced in those rare situations in which privilege or work product protection is invoked. Rule 26(b)(5) information shall be disclosed in a “privilege log” served with the objections to production. The “privilege log” shall, at a minimum, contain the facts suggested in paragraph K (pages 8-11) of the Introduction to Civil Discovery Practice in the Southern District of Alabama, Civil Discovery Committee (1998) (distributed by the Clerk with the Local Rules and published on the Court’s website, <http://www.als.uscourts.gov>).

12. **DISPOSITIVE MOTIONS.** As previously ordered, a

motion for class certification, if any, is to be filed not later than **June 22, 2010. The Defendant shall respond to the motion within twenty-eight (28) days after being served. The final date for filing dispositive motions, including summary judgment motions, is reserved until the filing of a supplemental Rule 26(f) Report.**

In submitting exhibits, the parties are reminded of Local Rules 5.5(b) and (c), which provide that only relevant portions of deposition transcripts or other discovery materials shall be filed in support of or in opposition to a motion. Evidentiary submissions that do not comport with these requirements may be disregarded.

13. BRIEFS; LETTERS; COURTESY AND DUPLICATE COPIES; FAXING OF DOCUMENTS. Unless prior permission of the Court is given:

a. Briefs filed in support of or in opposition to any motion shall comply with SD ALA LR 7.1(b) (June 1, 1997). The Court will look with disfavor upon a motion to exceed the page limitation and will only grant such a motion for extraordinary and compelling reasons.

b. Any application to the Court for an order shall comply with LR 5.1(c) & (d).

c. Papers transmitted to the Court by facsimile will not be accepted for filing. A copy of this Court's policy regarding the faxing of documents can be found on the Court's website, <http://www.alsd.uscourts.gov>.

14. MODIFICATION OF RULE 16 ORDERS. All parties are reminded that this scheduling order shall not be modified except upon a showing of good cause and by leave of Court. An order entered after the final pretrial conference shall be modified only to prevent manifest injustice. Rule 16(b) & (e), Fed.R.Civ.P.

15. SETTLEMENT/ADR. A substantial percentage of the civil actions filed in this Court eventually settle, so early settlement negotiations are strongly encouraged in order to preserve scarce judicial resources and

litigation costs. If settlement negotiations prove unsuccessful, the parties may seek further assistance through the procedures set forth in this Court's Alternative Dispute Resolution Plan. Accordingly, the parties are **ORDERED** to file a written assessment of the possibility of resolving the issues in this case through a recognized ADR procedure. The written assessment shall be filed as soon as possible during the first phase of discovery no later than the close of discovery. Rule 16(c)(2)(I).

16. LOCAL RULES. All parties are reminded that the Local Rules of this district contain important requirements concerning the commencement of discovery, motions to dismiss and for summary judgment, and other matters. They are reprinted in ALABAMA RULES OF COURT (West Publishing Co.) and ALABAMA RULES ANNOTATED (The Michie Company), but are amended from time to time. A current version may be obtained from the Clerk or downloaded from the Court's website, <http://www.als.uscourts.gov>. Local Rule 5.5(a) proscribes the filing of most discovery materials.

17. SANCTIONS. The unjustified failure of a party or a party's attorney to timely comply with the requirements of this scheduling order shall be deemed a failure to obey the scheduling order and shall subject said party or party's attorney to one or more of the sanctions authorized by Rule 16(f).

18. ELECTRONICALLY STORED INFORMATION. It is decided that the parties have agreed on the scope of ESI to be preserved, the manner of its production and the methodology for assessing the costs of production. Any variance from these agreements must be explained fully if any motion covering the production and costs of ESI is filed.

DONE AND ORDERED this 22nd day of December, 2009.

s/WILLIAM E. CASSADY
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DISTRICT

SUSSIE J. DALTON,

*

Plaintiff,

*

vs.

* Case No.: 1:09-cv-00563-CB-C

CARDWORKS SERVICING,

*

Defendant.

*

NOTICE OF SERVICE

COME NOW, Defendant CardWorks Servicing, LLC, by and through the undersigned counsel, and hereby gives notice to the Court that the following documents have been served upon Plaintiff this 12th day of January, 2010:

1. Defendant's Disclosures Pursuant to Federal Rule of Civil Procedure 26(a)(1).

s/ James B. Newman

JAMES B. NEWMAN (NEWMJ8049)
Attorney for Defendant CardWorks
Servicing, LLC

OF COUNSEL:

HELMSING, LEACH, HERLONG,
NEWMAN & ROUSE
POST OFFICE BOX 2767
MOBILE, ALABAMA 36652
(251) 432-5521
Email: jbn@helmsinglaw.com

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Earl P. Underwood, Jr.
James D. Patterson
21 South Section Street
Fairhope, Alabama 36533

Kenneth J. Riemer
Post Office Box 1206
Mobile, Alabama 36633

this 12th day of January, 2010.

s/ James B. Newman
OF COUNSEL

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SUSSI J DALTON, individually)	
and on behalf of all similarly situated)	
individuals,)	
)	
PLAINTIFF,)	
	)	CIVIL ACTION NO.:
vs.	)	09-00563-CB-C
)	
CARDWORK SERVICING, LLC.)	
)	
DEFENDANT.	)	CLASS ACTION

PLAINTIFF'S INITIAL DISCLOSURES

COMES NOW Sussi J. Dalton, by and through the undersigned counsel, and files this, her Initial Disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure and the scheduling order entered by the Court on December 23, 2009. [Doc. 13]

(A) The name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings identifying the subjects of the information:

1. **Sussi J. Dalton**
407 Bienville Blvd
Dauphin Island, Alabama 36528
251.

Plaintiff has knowledge of the allegations and claims set forth in the Complaint.

2. **A representative of Cardwork Servicing, LLC.**

This person will have information about the procedures followed by Cardwork Servicing, LLC to comply with the FDCPA.

- (B) A copy, or a description by category and location, of all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment:

Any and all correspondence received from Cardwork Servicing LLC, including all collection letters. These documents will be provided under separate cover. Plaintiff reserves the right to supplement her responses to this disclosure.

- (C) A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 of the Federal Rules of Civil Procedure the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered:

The following categories have been used to calculate the amount of damages: embarrassment, mental anguish, loss of reputation, out-of-pocket expenses, attorneys' fees, statutory fees, and punitive damages. Exact damage amounts are undetermined at this time. Documents used in determining these categories will be produced. Future documents obtained may be used for further computation.

- (D) For inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Not applicable to Plaintiff.

Respectfully submitted on this, the 12th day of January, 2010.

s/ James D. Patterson, Esq.
Law Offices of Earl P. Underwood, Jr.
21 South Section Street
Fairhope, Alabama 36532
Phone: 251.990.5558
Fax: 251.990.0626
E-mail: jpatterson@alalaw.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this the 12th day of January, 2010, I electronically filed the notice of service of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ James D. Patterson
James D. Patterson, Esq.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SUSSI DALTON, individually and)	
on behalf of all similarly situated)	
individuals,	)	CASE No. 09-CV-563
)	
Plaintiff,)	
)	
vs.	)	CASE NO.: 09-CV-563
)	
CARDWORKS SERVICING, LLC)	
)	
Defendant.)	

**JOINT MOTION FOR PRELIMINARY APPROVAL
OF CLASS SETTLEMENT AGREEMENT**

Come now the Plaintiff and Defendant CardWorks Servicing, LLC (“CardWorks”), each by and through their undersigned attorneys, and move this Court to enter an order providing preliminary approval of the settlement of this matter, and as grounds therefore shows the Court as follows:

1. Plaintiffs and CardWorks have entered into a Settlement Agreement, which is attached hereto as Exhibit 1, which completely resolves this matter. The Settlement Agreement is based upon the certification of a nationwide class of consumers to whom CardWorks sent a collection letter exemplified by Exhibit “A” to the settlement agreement. The terms of the settlement are fair, reasonable and adequate, and the Settlement Agreement is the product of extensive and vigorous negotiation conducted over several months of negotiations.

2. In determining whether to give final approval to the proposed settlement, the parties respectfully submit that the Court must find that the settlement is fair, adequate and reasonable, and not the product of collusion. In determining whether the settlement meets these goals, the parties respectfully submit that the following criteria should be examined:

- (a) The existence of fraud or collusion behind the settlement;
- (b) The complexity, expense and duration of the litigation;
- (c) The stage of proceedings and the amount of discovery concluded;
- (d) The probability of Plaintiff's success on the merits;
- (e) The range of possible recovery; and
- (f) The opinions of class counsel, class representatives and absent class members.

Leverso v. SouthTrust Bank, 18 F.3d 1527 (11th Cir. 1994).

3. When determining whether to approve a class action settlement, the parties respectfully submit that the Court conducts a two step process. First, the Court should make a preliminary fairness evaluation of the proposed settlement. See Manual for Complex Litigation, 4th § 21.632 (2004). This motion seeks such a preliminary approval, which should evaluate the likelihood that the Court will approve the settlement during its second review stage, after the completion of a full fairness hearing. During the preliminary evaluation, the Court should examine the submitted materials and determine whether the proposed settlement appears fair on its face. In re Corrugated Container Antitrust Litigation, 643 F.2d 195, 212 (5th Cir. 1981).

4. The settlement as proposed in the accompanying documents provides substantial relief to the proposed class. The settlement is the product of extensive and vigorous settlement negotiations. The settlement of this action will end lengthy and complex litigation, and provide meaningful and substantial relief to a nationwide class of consumers. As such, request is made that this Court issue its preliminary approval of the settlement, and allow notice to be issued as contemplated in the settlement documents.

WHEREFORE, Plaintiff and Defendant request an Order of this Court preliminarily approving the settlement as set forth herein, approving the notices attached to the settlement agreement, and such other and further orders as may be appropriate, the premises considered.

Done this 4th day of August, 2010.

/s/ Earl P. Underwood, Jr.¹
EARL P. UNDERWOOD, JR. (UNDEE6591)
Counsel for Representative Plaintiffs and the Class

OF COUNSEL:
Underwood & Riemer, PC
21 South Section Street
Fairhope, Alabama 36533
(251) 990-5558
Email: epunderwood@alalaw.com

¹ Attorney Earl P. Underwood, Jr., has given permission for his signature to be affixed to this document for filing with the Court.

s/James B. Newman

JAMES B. NEWMAN (NEWMJ8049)

Attorney for Defendant CardWorks Servicing, LLC

OF COUNSEL:

Helmsing, Leach, Herlong

Newman & Rouse

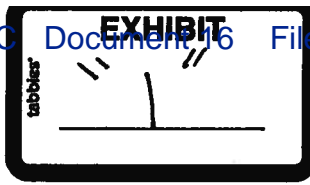
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254855



**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SUSSI DALTON, individually and)	
on behalf of all similarly situated)	
individuals	)	CASE No. 09-CV-563
Plaintiff,)	
)	
v.)	
)	
CARDWORKS SERVICING, LLC)	
)	
Defendant.)	

SETTLEMENT AGREEMENT

This Settlement Agreement, between Plaintiff, Sussi Dalton individually, and on behalf of a settlement class of similarly situated persons in the matter of Sussi Dalton., v. CardWorks Servicing, LLC, and Defendant, CardWorks Servicing, LLC ("CardWorks"), was reached after arms-length negotiations between all parties, and is entered into as of July____, 2010.

The settlement class consists of all persons in the United States who received from CardWorks the form collection letter annexed hereto as Exhibit A, on or after August 28, 2008 and who have affirmatively "opted-in" to this Settlement Agreement (the "Settlement Class").

PREAMBLE

A. Plaintiff Sussi Dalton filed her Complaint in this action on August 28, 2009. The Complaint alleges that the debt collection letter at issue violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA"). The Complaint also

claims that CardWorks' alleged violation of the FDCPA renders it liable for statutory damages, costs, and reasonable attorneys' fees.

B. CardWorks denies that it is liable in any way to Plaintiff or the Settlement Class and denies that its actions violated the FDCPA in any manner. CardWorks is, however, willing to enter into this Settlement Agreement to avoid the further expense and inconvenience of litigation, and has concluded that it is in its best interest to resolve and settle all claims which have been made or could be made against it by Plaintiff and the Settlement Class arising out of CardWorks' alleged violation of the FDCPA.

C. Plaintiff, through her attorneys, has made a thorough and independent investigation of the facts and law relating to the controversies between the parties. Plaintiff and her counsel have concluded that the outcome of the controversies existing between the parties cannot be ascertained with certainty and that it is in the best interests of the Plaintiff and the Settlement Class to resolve their claims against CardWorks upon the terms in this Settlement Agreement.

SETTLEMENT TERMS

NOW, THEREFORE, it is agreed by and between the undersigned that this lawsuit is settled, upon final approval by the District Court after a hearing, and upon entry of a final judgment of dismissal with prejudice as provided in this Settlement Agreement, all subject to the following terms and conditions:

1. This Settlement Agreement shall not be construed or be deemed to be an admission or concession by CardWorks of any liability or wrongdoing whatsoever, and CardWorks specifically denies that the conduct at issue gives rise to any such liability.

2. The parties agree to undertake and use their commercially reasonable efforts to effectuate this Settlement Agreement and to support and conclude the settlement described herein (the "Settlement"). As soon as practicable, the parties will take all necessary steps to secure the Court's preliminary approval of this Settlement Agreement and after notice to all individuals eligible to opt into the Settlement Class (the "Opt-In Eligibles"), the parties will take all steps necessary to secure the final approval of the Settlement Agreement and the dismissal of the lawsuit with prejudice. For the purposes of this Settlement only, two or more Opt-In Eligibles jointly obligated on the same debt who "opt-in" shall be treated as a single Settlement Class member.

3. For purposes of settlement only, CardWorks agrees to the certification of the Settlement Class, pursuant to Fed.R.Civ.P. 23(b)(3).

4. For the purposes of settlement only, CardWorks agrees to the appointment of Sussi Dalton as class representative and the appointment of her attorneys, Kenneth J. Riemer and Earl P. Underwood , Jr. , of Underwood & Riemer, PC., as class counsel (the "Class Rep" and the "Class Counsel" respectively).

5. Under the terms of this Settlement Agreement, class certification is appropriate because:

- (a) the Settlement Class is so numerous that joinder of all members is impracticable;
- (b) there are questions of law and fact common to the Settlement Class;
- (c) the claim of the Class Rep is typical of the claims of the Settlement Class; and,

- (d) the Class Rep will fairly and adequately protect the interest of the Settlement Class.

6. Pursuant to section 1692k of the FDCPA, the maximum statutory damages recoverable by the Settlement Class against CardWorks would be the lesser of 1% of CardWorks' net worth or \$500,000. Here, CardWorks' counsel has represented that 1% of Cardworks' net worth as of the relevant date is approximately \$109,000. Moreover, CardWorks has represented that there are approximately 18,500 potential members of the Settlement Class.

7. CardWorks represents that it is not aware of any other lawsuits pending against it concerning the collection letter/action at issue here.

Settlement Payment

8. In consideration of the full and complete settlement, release and discharge of all claims of the Class Rep and the Settlement Class against CardWorks, and subject to the provisions of this Settlement Agreement and all applicable orders of the District Court, CardWorks agrees to pay up to, and in no case more than, \$100,000 as described below:

(i) \$3,000 to Class Rep Sussi Dalton;

(ii) \$35,000 to Class Counsel; and

(iii) up to, but in no case more than, \$62,000, inclusive of fees

associated with notice to the Opt-In Eligibles and distribution of settlement funds to the Settlement Class (the "Settlement Class Funds"), to be divided, after the deduction of said fees and costs, pro-rata among the Settlement Class as described within

Paragraph 10 herein. In no event shall any Opt-In Eligible who does not affirmatively “opt-in” to the Settlement Class be entitled to any relief under this Settlement Agreement.

Timing of Settlement Payments

9. Upon preliminary approval of this Settlement Agreement, CardWorks shall, within fourteen (14) days, make payment to Tilghman & Co., Inc. (the “Claims Administrator”), from the Settlement Class Funds, for all costs associated with providing notice of this Settlement to the Opt-In Eligibles. The notice shall provide that an Opt-In Eligible may opt-in to the Settlement Class.

10. Within thirty (30) days after the final approval of this Settlement Agreement, CardWorks shall (i) make payment to the Claims Administrator, from the Settlement Class Funds, of all costs associated with the administration of claims and distribution of settlement funds to the Settlement Class; (ii) make payment to the Claims Administrator, from the Settlement Class Funds, in the amount of the lesser of the remainder of the Settlement Class Funds or a sum representing \$10.00 for each Settlement Class who has affirmatively “opted-in” to the Settlement Class by submitting a claim form to the Claims Administrator on or before fifteen (15) days prior to the hearing before the Court on the final approval of this Settlement Agreement; and (iii) make payment to Class Counsel in the amount of \$38,000, representing the \$3,000 payment due the Class Rep and \$35,000 representing attorneys’ fees and costs associated with this litigation.

11. If an objection to the Settlement is filed by any Settlement Class Member, or any other person or entity, the payments set forth within Paragraph 9 and 10 herein shall be made 14 or 30 days, respectively, after the final denial of any such objection.

Claims Administration

12. The Claims Administrator shall send out the class notice annexed here to as Exhibit B (the "Class Notice") to each Opt-In Eligible within 14 days of preliminary approval of this Settlement Agreement by the Court.

13. Counsel for CardWorks shall provide to the Claims Administrator the names and addresses of each Opt-In Eligibles reasonably available or accessible to CardWorks (the "Information"). The Information shall not be provided until the Claims Administrator acknowledges in writing that the Information is considered confidential and shall not be provided to any other person or entity, including but not limited to the Class Rep or Class Counsel. Upon completing its duties, the Claims Administrator shall return all copies of information provided to it by CardWorks.

Covenant of Non-Solicitation

14. Class Counsel agrees that for a period of two (2) years following the date of this Settlement Agreement, it will not solicit, directly or indirectly, and shall not refer to any other person, business from any Opt-In Eligible which is related in any way to the facts alleged in this litigation.

15. CardWorks, pursuant to 28 U.S.C. § 1715 of the Class Action Fairness Act, shall notify the appropriate Federal and State regulatory authorities of this proposed Settlement within 10 days of the filing of the motion to approve this

Settlement Agreement and shall file with the Court notification of CardWorks' compliance with 28 U.S.C. § 1715(b).

16. The Settlement set forth in this Settlement Agreement shall not become effective unless the Court finally approves the Settlement Agreement, without material alteration, as fair, reasonable, and adequate. In the event that the Court does not approve this Settlement Agreement, this entire Settlement Agreement shall become null and void. In the event that this Settlement Agreement shall become null and void for any reason, the provisions of Rule 408 of the Federal Rules of Evidence will apply. No admission of law, fact, or combination of law and fact will be found to exist as a result of this Settlement Agreement, and no part of this Settlement Agreement will be admissible in any litigation.

17. Promptly after the execution, the parties shall jointly submit this Settlement Agreement to the Court and move for an order: (a) preliminarily finding that this Settlement Agreement is fair to all members of the Settlement Class; and, (b) approving the Class Notice.

Release

18,. Class Rep and the Settlement Class, and each of them, hereby release and forever discharge CardWorks, its past or present parents, affiliates, subsidiaries, successors, predecessors and assigns, and its present or former directors, officers, employees, partners, members, principals, employees, agents, insurers and attorneys, ("Released Parties") of and from all causes of action, suits, claims and demands, whatsoever, in law or in equity, known or unknown at this time, which Class Rep and

the Settlement Class now have, ever had, or hereafter may have against CardWorks, or any of them, arising out of or relating to the claims that were asserted or alleged or which could have been asserted or alleged in the Complaint and arising out of CardWorks' alleged violations of the FDCPA. CardWorks hereby agrees that it shall be barred from pursuing any claims for relief under 15 U.S.C. § 1692k(a)(3), 28 U.S.C. § 1927, or F.R.C.P. Rule 11, against Class Rep, Class Counsel or against any member of the Settlement Class arising out of CardWorks' alleged violations of the FDCPA asserted or alleged or which could have been asserted or alleged in the Complaint. The underlying debts, which CardWorks was attempting to collect, via the collection letter at issue, are in no way affected by this Settlement Agreement and nothing herein shall prevent CardWorks from continuing to attempt to collect the debts allegedly owed by the Class Rep or the Settlement Class. Except as provided for in this Settlement Agreement, Class Representative, the Settlement Class and Class Counsel hereby waive, discharge and release the Released Parties from any and all claims for attorney's fees by lien or otherwise, for legal services rendered by Class Counsel in connection with this litigation.

19. Nothing in this Settlement Agreement shall affect the rights of any Opt-In Eligible member who does not affirmatively "opt-in" to the Settlement Class to pursue any of its rights or any claim against CardWorks.

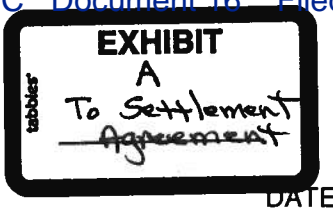
20. The Court shall retain jurisdiction over the Settlement and this Settlement Agreement.

21. The parties agree that this Settlement Agreement is the product of negotiation between the parties through their respective counsel and that no party shall be deemed to have drafted this Settlement Agreement.

22. This Settlement Agreement shall be interpreted in accordance with the laws of the State of Alabama for all state law issues, and in accordance with Federal law for all other issues.

23. This Settlement Agreement shall become effective upon its execution, which may be done in counterparts and final approval of the Court. Photocopies or facsimiles of executed copies of this Settlement Agreement may be treated as originals.

<p>UNDERWOOD & RIEMER, PC</p> <p>By: _____ Earl P. Underwood, Jr. 21 South Section Street Fairhope, Alabama 36533 (251) 990-5558</p> <p><i>Attorneys for Plaintiff</i></p>	<p>HELMSING, LEACH, HERLONG, NEMAN & ROUSE</p> <p>By: _____ James B. Newman Post Office Box 2767 Mobile, Alabama 36652 (251) 432-5521</p> <p><i>Attorneys for Defendants</i></p>
---	--



DATE

CARDWORKS SERVICING
P.O. BOX 9201
OLD BETHPAGE, NY 11804

NAME
ADDRESS 1
CITY, STATE ZIP

Account number: XXXXXXXXXXXXXXXX
Re: NAME
Balance Due: \$XXX.XX
Creditor: CREDITOR NAME

Dear CUSTOMER:

Please be advised that your above referenced account, is being handled by this office and is in default.

By contacting us within five (5) days of the date of this letter, payment arrangements on your account can be made. Please contact our office today, toll free, at 1-877-487-5583 to avoid additional collection efforts. The hours of operation are Monday-Wednesday and Friday 8:00 am to 9:00 pm EST, Thursday 12:30pm to 9:00 pm EST, and Saturday 8:00 am to 4:30 pm EST.

If you have any questions, please contact us at 1-877-487-5583.

Sincerely,
CardWorks Servicing

IMPORTANT NOTIFICATION REQUIRED BY FEDERAL LAW

This is an attempt to collect a debt. Any information obtained will be used for that purpose. This communication is from a debt collector. Unless you notify this office in writing within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, this office will: (i) Obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. (ii) Provide you with the name and address of the original creditor, if different from the current creditor.

IMPORTANT NOTIFICATION REQUIRED BY FEDERAL LAW

FEDERAL VALIDATION NOTICE:

PURSUANT TO U.S.C/1692G/(a). TAKE NOTICE THAT:

1. THE AMOUNT OF THE CLAIMED DEBT IS THE AMOUNT STATED IN THE LETTER ON THE REVERSE SIDE OF THIS NOTICE.
2. THE NAME OF THE CREDITOR TO WHOM IS OWED IS IN THE LETTER ON THE REVERSE SIDE OF THIS NOTICE.
3. UNLESS YOU DISPUTE THE VALIDITY OF THE ABOVE DEBT, OR ANY PORTION THEREOF, WITHIN THIRTY (30) DAYS AFTER YOUR RECEIPT OF THIS NOTICE, THE DEBT WILL BE ASSUMED TO BE VALID BY US.
4. IF YOU NOTIFY OUR OFFICE BELOW IN WRITING WITHIN THIRTY (30) DAYS OF YOUR RECEIPT OF THIS NOTICE THAT THE DEBT, OR ANY PORTION THEREOF IS DISPUTED, WE WILL OBTAIN VERIFICATION OF THE DEBT OR A COPY OF ANY JUDGEMENT TO YOU.
5. UPON YOUR WRITTEN REQUEST TO THE OFFICE BELOW WITHIN THIRTY (30) DAYS OF YOUR RECEIPT OF THIS NOTICE, WE WILL PROVIDE YOU WITH THE NAME AND THE ADDRESS OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM THE CURRENT CREDITOR LISTED IN THE LETTER ON THE REVERSE SIDE OF THIS NOTICE.

TENNESSEE RESIDENTS:

THIS COLLECTION AGENCY IS LICENSED BY THE COLLECTION SERVICE BOARD OF THE DEPARTMENT OF COMMERCE AND INSURANCE.

COLORADO RESIDENTS:

FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.AGO.STATE.CO.US/CADC/CADCMAIN.CFM. A CONSUMER HAS THE RIGHT TO REQUEST IN WRITING THAT A DEBT COLLECTOR OR COLLECTION AGENCY CEASE FURTHER COMMUNICATION WITH THE CONSUMER. A WRITTEN REQUEST TO CEASE COMMUNICATION WILL NOT PROHIBIT THE DEBT COLLECTOR OR COLLECTION AGENCY FROM TAKING ANY OTHER ACTION AUTHORIZED BY LAW TO COLLECT THE DEBT.

NEW YORK STATE RESIDENTS:

NEW YORK CITY DEPARTMENT OF CONSUMERS AFFAIRS LICENSE NUMBER: 1184611

WISCONSIN RESIDENTS:

THIS COLLECTION AGENCY IS LICENSED BY THE OFFICE OF THE ADMINISTRATOR OF THE DIVISION OF BANKING, P.O. BOX 7876, MADISON, WISCONSIN 53707.

NORTH CAROLINA RESIDENTS:

NORTH CAROLINA DEPARTMENT OF INSURANCE PERMIT NUMBER: 4390

MINNESOTA RESIDENTS:

THIS COLLECTION AGENCY IS LICENSED BY THE MINNESOTA DEPARTMENT OF COMMERCE.

CALIFORNIA RESIDENTS:

1. THE STATE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT AND THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT REQUIRE THAT, EXCEPT UNDER UNUSUAL CIRCUMSTANCES, COLLECTORS MAY NOT CONTACT YOU BEFORE 8 AM OR AFTER 9 PM. THEY MAY NOT HARASS YOU BY USING THREATS OF VIOLENCE OR ARREST OR BY USING OBSCENE LANGUAGE. COLLECTORS MAY NOT USE FALSE OR MISLEADING STATEMENTS OR CALL AT WORK IF THEY KNOW OR HAVE REASON TO KNOW THAT YOU MAY NOT RECEIVE PERSONAL CALLS AT WORK. FOR THE MOST PART, COLLECTORS MAY NOT TELL ANOTHER PERSON TO CONFIRM YOUR LOCATION OR ENFORCE A JUDGEMENT. FOR MORE INFORMATION ABOUT DEBT COLLECTION ACTIVITIES, YOU MAY CONTACT THE FEDERAL TRADE COMMISSION AT 1-877-FTC-HELP OR WWW.FTC.GOV.

2. AS REQUIRED BY LAW, YOU ARE HEREBY NOTIFIED THAT A NEGATIVE CREDIT REPORT REFLECTING ON YOUR CREDIT RECORD MAY BE SUBMITTED TO A CREDIT REPORTING AGENCY IF YOU FAIL TO FULFILL THE TERMS OF YOUR CURRENT OBLIGATIONS.

UTAH RESIDENTS:

AS REQUIRED BY UTAH LAW, YOU ARE HEREBY NOTIFIED THAT A NEGATIVE CREDIT REPORT REFLECTING ON YOUR CREDIT RECORD MAY BE SUBMITTED TO A CREDIT REPORTING AGENCY IF YOU FAIL TO FULFILL THE TERMS OF YOUR CREDIT OBLIGATIONS.

MASSACHUSETTS RESIDENTS:

YOU HAVE THE RIGHT TO MAKE A WRITTEN OR ORAL REQUEST THAT TELEPHONE CALLS REGARDING YOUR DEBT NOT BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT. ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN (10) DAYS UNLESS YOU PROVIDE WRITTEN COMMUNICATION OF THE REQUEST POSTMARKED OR DELIVERED WITHIN SEVEN (7) DAYS OF SUCH REQUEST. YOU MAY TERMINATE THIS REQUEST BY WRITING TO THE DEBT COLLECTOR AT P.O. BOX 9201, OLD BETHPAGE, NY 11804-9001. IF YOU WISH TO DISCUSS THIS MATTER, PLEASE CALL US DIRECT AT 1-877-487-5583 DURING THE HOURS REFERENCED BELOW.

HOURS OF OPERATION:

MONDAY-WEDNESDAY AND FRIDAY 8:00AM TO 9:00PM EST
THURSDAY 12:30PM TO 9:00PM EST
SATURDAY 8:00AM TO 4:30PM EST
PHONE NUMBER 1-877-487-5583

))))))))))

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YOU ARE HEREBY FURTHER NOTIFIED, pursuant to an Order of the Court and Rule 23 of the Federal Rules of Civil Procedure, that a settlement of this litigation has been reached. One of the purposes of this Notice is to inform you of the settlement and of the Settlement Hearing to be held by the Court to consider the fairness, reasonableness and adequacy of the settlement. This Notice describes the rights you may have in relation to the settlement and this litigation.

NATURE OF THE ACTION

Plaintiffs have asserted claims in connection with certain language used in Exhibit “A.” Plaintiffs contend that CardWorks engaged in unlawful practices relating to disclosures required by the Fair Debt Collection Practices Act (FDCPA) disclosures.

CardWorks has denied and continues to deny any and all claims and contentions alleged by the Plaintiffs in this litigation and continues to deny all charges of wrongdoing or liability against it arising out of any of the conduct, disclosures, acts or omissions alleged, or that could have been alleged, in this litigation.

DEFINITION OF THE SETTLEMENT CLASS

If the Settlement Agreement is approved, the Court will certify a class in this litigation for the purpose of settlement. This class would consist of all persons who after August 28th 2008 received a form collection letter from CardWorks exemplified by Exhibit “A” who elect to “opt-in” to the settlement (the “Settlement Class”).

EFFECT OF PARTICIPATING IN THE SETTLEMENT

If you elect to become a member of the Settlement Class as defined herein, your legal rights with respect to the claims asserted against CardWorks will be determined in this action and you will be bound by any order or judgment that the Court has entered or will enter with

respect to the Settlement Class. Unless you timely opt-in to the Settlement Class in the manner set forth below you will not be entitled to share in the settlement

THE SETTLEMENT

Pursuant to the terms of the Settlement Agreement, and in consideration for the release of the Settlement Class members' claims, CardWorks will make a settlement payment to all members of the Settlement Class. If you select to opt-in to the Settlement Class, the settlement payment you receive from CardWorks will depend on a number of variables, including but not limited to the number of persons who elect to become members of the Settlement Class and Claims Administrator costs. However, in no event will any member of the Settlement Class be entitled to a payment in excess of Ten Dollars (\$10.00).

THE RIGHTS OF CLASS MEMBERS

If you are eligible to be a member of the Settlement Class, and you request to be included in the Settlement Class as described below, you will be bound by the terms of the proposed settlement described in this Notice, upon approval of the settlement by the Court.

If you are eligible to be a member of the Settlement Class, you have the following options:

1. You may elect to be bound by the Settlement Agreement and receive the proceeds from the settlement. You will receive a check after the proper distribution amounts are calculated. You will be bound by any and all determinations or judgments in this litigation in connection with the settlement entered into or approved by the Court. Moreover, you shall be deemed to have, and by operation of the judgment shall have, fully released all of the Released Claims against CardWorks and all other Released Persons, as defined within the Settlement Agreement. If you want to be included in the Settlement Class, you must mail or deliver, such

that it is *received* on or before _____, the enclosed Proof of Claim form as set forth below.

2. You may elect to opt-in to the Settle Class, as described above, and object to the settlement and/or the application of Representative Plaintiff's Counsel for an award of attorneys' fees and reimbursement of expenses in the manner set forth below.

3. You may, but are not required to, enter an appearance through counsel of your own choosing at your own expense. If you do not do so and you opt-in to the Settlement Class, you will be represented by the law firm which has been appointed by the Court as counsel for the Representative Plaintiff and the Settlement Class.

4. You may do nothing. If you do not submit a claim for settlement benefits, and you do not request to be included in the Settlement Class, you will not be eligible for or receive any of the proceeds from the settlement, but you will not be bound by the Settlement Agreement.

CLAIMS PROCESS

You must file the attached Proof of Claim to become a member of the Settlement Class. If you properly file a Proof of Claim you will share in the proceeds of the settlement. All Proof of Claim forms must be postmarked or received by _____, addressed as follows:

CS Litigation
Proof of Claim
NAME OF CLAIMS ADMINSTRATOR
Street Address
City, State, Zip

THE HEARING ON THE SETTLEMENT

The Settlement Hearing in this litigation will be held before the Honorable _____ at the United States Courthouse, 113 St. Joseph Street, Mobile Alabama 36602, on _____, for the purpose of determining: (1) whether the

settlement is fair, just, reasonable, and adequate and whether it should be approved by the Court; (2) whether the proposed distribution of settlement proceeds is fair, just, reasonable, and adequate; (3) whether application of Representative Plaintiff and Representative Plaintiff's Counsel, as defined within the Settlement Agreement, of an award of attorney's fees, costs, and expenses should be approved; and (4) whether final judgment should be entered dismissing the litigation with prejudice. The Settlement Hearing may be adjourned from time to time by the Court at the Settlement Hearing or any adjourned session thereof without further notice.

Any member of the Settlement Class may appear at the Settlement Hearing to show cause why the proposed settlement should not be approved, or why the litigation should not be dismissed with prejudice, and to present any opposition to the distribution of settlement proceeds or the application of Representative Plaintiff or Representative Plaintiff's Counsel for attorney's fees, costs, and expenses, provided, however, that no such person shall be heard, unless his or her objection or opposition is made in writing and is filed by him or her with the Court no later than _____, and received (by fax or otherwise) on or before _____, by each of the following:

For Representative Plaintiff and/or the Settlement Class:

Earl P. Underwood, Jr.
Underwood & Riemer, PC
21 S. Section Street
Fairhope AL 36533
251-990-5558 (telephone)
251-990-0626 (fax)

For CardWorks:

James Newman
Helmsing, Leach, Herlong, Newman & Rouse
PO Box 2767
Mobile, AL 36652

Further, any exhibits or documents which such person intends to present must be made available for inspection and copying by the foregoing law firms at least _____ prior to the Settlement Hearing. Unless otherwise ordered by the Court, any member of the Settlement Class who does not make his or her objections or oppositions in the manner provided shall be deemed to have waived all objections and opposition to the fairness, reasonableness, and adequacy of the proposed settlement, the distribution of settlement proceeds, or the request of Representative Plaintiff or Representative Plaintiff's Counsel for attorney's fees, costs and expenses.

EXAMINATION OF PAPERS AND INQUIRIES

This Notice contains only a summary of the litigation and the terms of the proposed settlement. For a more detailed statement of the matters involved in the litigation, reference is made to the pleadings, to the Settlement Agreement, and to other papers filed in the litigation which may be inspected at the United States District Court for the Southern District of Alabama, during business hours of each business day. Additionally, a copy of the Settlement Agreement can be obtained from Representative Plaintiff's Counsel.

DO NOT CONTACT THE COURT REGARDING THIS NOTICE

If any questions arise about the settlement or the matters contained in this Notice, you may contact:

Earl P. Underwood, Jr.
Law Offices of Earl Underwood, Jr.
21 S. Section Street
Fairhope AL 36533
251-990-5558 (telephone)
251-990-0626 (fax)
Attorneys for the Settlement Class

James Newman
Helmsing, Leach, Herlong, Newman & Rouse
PO Box 2767
Mobile, AL 36652
205-250-5091 (telephone)
205-250-5034 (fax)
Attorneys for CardWorks

DATED: _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SUSSI DALTON, individually and
on behalf of all similarly situated
individuals

:

Plaintiff,

:

vs.

:

CA 09-00563-CB-C

CARDWORKS SERVICING, LLC,

:

Defendant.

ORDER

This action was referred to the undersigned for a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), and is before the Court on the parties' Joint Motion for Preliminary Approval of Class Settlement Agreement (Doc. 16), filed August 4, 2010.

“Judicial review of a proposed class action settlement is a two-step process: preliminary approval and a subsequent fairness hearing.” *Smith v. Wm. Wrigley Jr. Co.*, No. 09-60646-CIV, 2010 WL 2401149, at *1 (S.D. Fla. June 15, 2010) (citations omitted). The Court’s initial task is to make a “preliminary evaluation of the fairness of the settlement before directing that notice be given to the settlement class.” *Id.*; *see also Bennet v. Behrman Corp.*, 737 F.2d 982, 986 (11th Cir. 1984) (listing the factors courts in the Eleventh Circuit consider). Our preliminary evaluation here necessarily includes determining whether a class can and should be certified, consistent with the requirements of Rule 23. *See Outten v.*

Capital Mgmt. Servs., L.P., No. 09-22152-CIV, 2010 WL 2194442, at *1-*5 (S.D. Fla. Apr. 9, 2010) (addressing Rule 23 requirements for a settlement class in a case arising out of alleged violations of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692, *et seq.*); MANUAL FOR COMPLEX LITIGATION, FOURTH, § 21.632 (2004) (noting that where a case “is presented for both class certification and settlement approval, the certification hearing and preliminary fairness evaluation can usually be combined”)

The parties’ joint motion (Doc. 16) does not provide the Court with sufficient evidence to make its preliminary evaluation. By way of example only, the draft Settlement Agreement (Exhibit A to the motion) implies—but does not offer proof of—CardWorks’ net worth as of the relevant date—a fact this Court must consider to determine whether the “class settlement’s amount are fair, adequate, and reasonable,” *In re CP Ships Ltd. Sec. Litig.*, 578 F.3d 1306, 1318 (11th Cir. 2009) (quoting *Bennett*, 737 F.2d at 986), given the FDCPA’s statutory damages cap. 15 U.S.C. § 1692k(a)(2)(B); *see also Outten*, 2010 WL 2194442, at *1 (noting that there the Court “requested supplemental **evidence demonstrating** [defendant’s] net worth” before proceeding with its preliminary fairness review) (emphasis added)); *Thompson v. Midwest Found. Ind. Physicians Ass’n*, 124 F.R.D. 154, 156 (S.D. Ohio 1988) (“Preliminary approval of a proposed settlement is based upon the court’s familiarity with the issues and **evidence**.” (emphasis added)); *Thomas v. NCO Fin. Sys., Inc.*, No. Civ.A. 00-CV-05118, 2004 WL 727071, at *1 (E.D. Pa. Mar. 31, 2004) (noting that a joint motion for preliminary approval of a class settlement can be denied for deficiencies in the supporting evidence). Moreover, Plaintiff has failed to submit evidence the Court needs

to determine whether class certification is appropriate. *See, e.g., Outten*, 2010 WL 2194442, at *4 (citing named Plaintiff's declaration and affidavits in support in evaluating Rule 23(a)(4)'s adequacy requirement).

As such, the parties are **ORDERED** to supplement their Joint Motion for Preliminary Approval of Class Settlement Agreement (Doc. 16) **on or before August 30, 2010** with adequate evidence to allow the Court to proceed with its preliminary approval review.

DONE AND ORDERED this the 13th day of August, 2010.

s/ WILLIAM E. CASSADY
UNITED STATES MAGISTRATE JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SUSSI DALTON, individually and)	
on behalf of all similarly situated)	
individuals	)	CASE No. 09-CV-563
Plaintiff,)	
)	
v.)	
	)	<u>Unopposed</u>
CARDWORKS SERVICING, LLC)	
)	
Defendant.)	

**UNOPPOSED MOTION FOR ADDITIONAL SEVEN DAYS TO FILE
PLAINTIFF'S DECLARATION IN SUPPORT OF HER MOTION FOR PRELIMINARY
APPROVAL**

Comes now the Plaintiff by and through her undersigned attorney, and moves this Court to enter an order allowing seven additional days to file her declaration in support of Plaintiff's Motion for Preliminary Approval, and as grounds therefore shows the Court as follows:

1. Plaintiff's counsel prepared a declaration to be signed today and Mrs. Dalton was scheduled to execute her declaration in support of preliminary approval this afternoon.
2. Plaintiff telephoned her attorneys' office notifying them that she had become ill and had to go to the hospital for tests and would not be able to keep this afternoon's appointment.
3. Plaintiff stated that that she expected to be able to execute the declaration in the next few days.
4. Defendant does not oppose the additional seven days.

WHEREFORE, Plaintiff requests an Order of this Court for an additional seven days for her declaration to be filed making the declaration due not later than September 6th 2010.

/s/ Earl P. Underwood, Jr.
Earl P. Underwood, Jr. UNDEE6591
Underwood & Riemer, PC
21 South Section Street
Fairhope, Alabama 36533
251-990-5558
epunderwood@alalaw.com

Counsel for Representative Plaintiff and the Class

CERTIFICATE OF SERVICE

I hereby certify that on this the 30th day of August 2010, electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Earl P. Underwood, Jr. _____
Earl P. Underwood, Jr.

/s/ Earl P. Underwood, Jr.
Earl P. Underwood, Jr. (UNDEE6591)
Law Offices of Earl P. Underwood, Jr.
21 South Section St.
Fairhope, Alabama 36532
Voice: 251.990.5558
Fax: 251.990.0626
epunderwood@alalaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this, the 30th day of August 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Earl P. Underwood, Jr.
Earl P. Underwood, Jr.

EX. A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SUSSI DALTON, individually and)	
on behalf of all similarly situated)	
individuals	)	CASE No. 09-CV-563
Plaintiff,)	
)	
v.)	
)	
CARDWORKS SERVICING, LLC)	
)	
Defendant.)	

RESUME OF EARL P. UNDERWOOD, JR.

EDUCATION

1972 -1976 Jacksonville State University, B.S. in Psychology, Biology minor

1981-1985 Birmingham School of Law, Juris Doctorate

ALABAMA BAR ADMISSION

April 25, 1986 Alabama Bar Admission

COURT ADMISSIONS

April 25, 1986 Alabama Supreme Court

July 17, 1986 United States District Court for the Northern District of Alabama

August 15, 1990 United States District Court for the Middle District of Alabama

September 6, 1990 United States Claims Court

November 9, 1992 Eleventh Circuit Court of Appeals

June 19, 1995 United States Supreme Court

February 4, 2003 United States District Court for the Southern District of Alabama

January 10, 2008 Tenth Circuit Court of Appeals

May 12, 2009 United States District Court for the Northern District of Florida

LEGAL BOARDS and ASSOCIATIONS

Trial Lawyers Association of America	(1986 to present)
Alabama Trial Lawyers Association	(1986 to present)
National Association of Consumer Advocates	(1990 to present)
National Board of Trial Advocacy	(1995 to present)
Alabama Mediator	(1996 to present)
Alabama Arbitrator Roster	(2005 to present)

LEGAL PRACTICE

1986-2002: Anniston, Calhoun County, Alabama: Consumer Bankruptcy, Plaintiffs' Personal Injury, Wrongful Death, Workmen's Compensation, Environmental Pollution, Criminal Defense, Consumer Fraud, Products Liability, and Consumer Warranty Law.

1986-1988 Chapter 7 Bankruptcy Trustee in the U.S. Bankruptcy Court for the Northern District of Alabama, Eastern Division.

2003-2008: Fairhope, Baldwin County, Alabama: Plaintiffs' Personal Injury, Wrongful Death, Consumer Fraud, Products Liability, Consumer Law and Consumer Class Actions.

REPORTED CASES

ALABAMA

Knighten v. Bratcher, 586 So.2d 14 (Ala. Civ. App. 1991);

Henderson v. State, 650 So.2d 532 (Ala. Crim. App. 1994);

American Legion Post No. 57 v. Leahy, 681 So.2d 1337 (Ala. Sup. Ct. 1996);

Funderburg v. Black's Insurance Agency, 743 So.2d, 472 (Ala. Civ. App. 1999);

Springs Industries, Inc. v. Lowe, 770 So.2d 103 (Ala. Civ. App. 1999);

Ex parte Waples, 781 So.2d 179 (Ala. Civ. App. 2000)

Ex parte Herron, 792 So.2d 368 (Ala. Civ. App. 2001);

Singleton v. Protective Life Ins. Co., 857 So.2d 803, (Ala. Civ. App. 2003);

Pharmacia Corp. v. Suggs, 932 So.2d 95 (Ala. Civ. App. 2005)

ELEVENTH CIRCUIT

United States v. Pounds, 50 F.3d 1038 (1995);

United States v. Virgil, 105 F.3d 672 (1997);

MS Dealer Service Corporation v. Franklin, 177 F.3d 942 (1999);

Pelfrey v. Educational Credit Management Corporation, 208 F.3d 945, (April 6, 2000);

Cunningham v. Fleetwood Homes of Ga., 253 F.3d 611 (11th Cir. 2001);

Heimmermann v. First Union Mortg. Corp., 305 F.3d 1257 (September 18, 2002);

Robinson v. Equifax Information Services, L.L.C., 200 Fed.Appx. 945, (11th Cir. 2006)

Berman v. Blount Parrish & Co., Inc. 525 F.3d 1057, 1057 (C.A.11 (Ala.),2008)

U.S. DISTRICT COURTS

Heimmermann v. First Union Mortgage Corporation, 188 F.R.D. 403, (N. D. Ala.1999);

Pelfrey v. Educational Credit Management Corporation,71 F.Supp.2d 1161 (N.D. Ala. 1999);

Wood v. Cooper Chevrolet, Inc., 102 F.Supp.2d 1345, (N.D. Ala. 2000);

In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Products Liability Litigation 2001 WL 872601, (E.D.Pa.,2001)

Braxton v. Farmer's Ins. Group, 209 F.R.D. 654 (N.D. Ala September 16, 2002);

Baynes v. ALLTEL Wireless of Ala., Inc., 322 F. Supp. 2d 1307 (M.D. Ala. 2004);

Clark v. Experian Info. Solutions, Inc., 2004 U.S. Dist. LEXIS 28324 (D.S.C. 2004);

Nunnally v. Equifax Info. Servs. LLC, 366 F. Supp. 2d 1119 (N.D. Ala. 2005);

Morrisette v. Novastar Home Mortgage., Inc., 484 F. Supp.2d 1227 (S.D. Ala. 2007);

Berman v. Blount Parrish & Co., Inc. ,523 F.Supp.2d 1298 (M.D. Ala. 2007).

Estate of Ellison v. Class.com, Inc., 2008 U.S. Dist. LEXIS 47504, June 16, 2008, Decided, June 16, 2008, Filed

McMillian v. AMC Mortg. Services, Inc. 2008 WL 2357236 (S.D.Ala.,2008)

Edwards v. Accredited Home Lenders, Inc. 2008 WL 1756364 (S.D.Ala.,2008)

In re Farmers Ins. Co., Western Dist. Case No. CIV-03-158-F, MDL No. 1564, 2008 U.S. Dist. LEXIS 18783, March 10, 2008, Decided, March 10, 2008, Filed

Mallory v. GMS Funding, LLC 2008 WL 276578 (S.D.Ala.,2008)

Williams v. Saxon Mortg. Co. 2008 WL 45739 (S.D.Ala.,2008)

Edwards v. Accredited Home Lenders, Inc., 2009 U.S. Dist. LEXIS 37959, May 4, 2009, Decided, May 4, 2009, Filed

Boudin v. South Point, Inc., 2009 U.S. Dist. LEXIS 48717, June 9, 2009, Decided, June 9, 2009, Filed

Prince v. U. S. Bank Nat'l Ass'n, 2009 U.S. Dist. LEXIS 84304, September 14, 2009, Decided, September 14, 2009, Filed

Ward v. Lime Fin. Servs., 2009 U.S. Dist. LEXIS 98530, October 21, 2009

Watson v. Homecomings Fin., LLC, Civil No. 09-859 (DWF/JJG), 2009 U.S. Dist. LEXIS 99260, October 23, 2009

BANKRUPTCY COURT

In re Tudors, 77 B.R. 904, (Bankr. N. D. of Ala., 1987);

In re Brand 108 B.R. 319, 319 (Bankr. N.D.Ala.,1989)

In re Malkove and Womack, Inc., 122 B.R. 444, (Bankr. N.D. Ala.1990);

In re Malkove and Womack, Inc., 134 B.R. 965, (Bankr. N.D. of Ala.1991);

Roper v. American Health and Fire Insurance Company (In re Roper), 203 B.R. 326, (Bankr. N.D. Ala., 1996);

In re Tippins, 221 B.R. 11, (Bankr. N.D. Ala. 1998);

Knepp v. Credit Acceptance Corporation (In re Knepp), 229 B.R. 821, (Bankr. N.D. Ala., January 29, 1999);

In re O'Dell, 251 B.R. 602, (Bankr. N.D. Ala., August 2, 2000);

In re Holcombe, 284 B.R. 141, (Bankr. N.D. Ala., March 27, 2001);

In re O'Dell, 268 B.R. 607, (Bankr. N.D. Ala., October 4, 2001);

CLASS ACTIONS

Hughes v. Commercial Credit Corporation, Case No. CV-96-615, Circuit Court of Calhoun County, Alabama.

William S. Goodson v. Cherokee National Life Insurance Company, et al., Case No. CV96-PWG-2663-E, Circuit Court of Calhoun County, Alabama

Betty Motes v. Liberty Finance, Inc., Case No. CV-97-103 Circuit Court of Calhoun County, Alabama

Ray W. McCleney, et al. v. MCD International, LLC, et al., Case No. CV-97-895, Circuit Court of Calhoun County, Alabama

Jerry Rainey, et al. v. Kent International, Inc. and Toys-R-Us, Inc., CV-01-150, Superior Court of Douglas County Georgia

Heimmermann v. First Union Mortgage Corporation, 188 F.R.D. 403, (N. D. Ala.1999)

Braxton v. Farmer's Ins. Group, 209 F.R.D. 654 (N.D. Ala September 16, 2002)

In re: Allstate Fair Credit Reporting Act Litigation, MDL 3:02-md-1457

In re: The Progressive Corporation Insurance Underwriting and Rating Practices Litigation U.S. District Court, Northern District of Florida, Gainesville Division, MDL Docket No. 1519

Clark v. Experian Info. Solutions, Inc., 2004 U.S. Dist. LEXIS 28324 (D.S.C. 2004)

David H. Cochran v. Murphy Automotive Group, LLC d/b/a Murphy Mitsubishi, et al. U.S. District Court, Northern District of Alabama, Southern Division, CV-03-HS-1709

Larry E. Farley, et al. v. Residential Funding Corporation, et al., U.S. District Court, Southern District of Alabama, Southern Division, Case No. 7:06-Cv-1864

Carl Tyler, Jr., and Grace Kelly Tyler v The Mortgage Outlet U.S. District Court, Southern District of Alabama, Southern Division, Case No. 1:08-cv-00007-B

LECTURES

“Payday Loan Debt Trap” July 16, 2010 -- sponsored by Alabama Bar Association;

“Lender Liability and Mortgage Crisis Opportunities” June 18, 2009 -- sponsored by Alabama Association for Justice;

“Lender Liability and Mortgage Crisis Opportunities” October 10, 2008 -- sponsored by Cumberland School of Law;

“Current Developments in Consumer Law” March 18, 2008 -- sponsored by Baldwin County Bar Association;

“Introduction to TILA and HOEPA” March 9, 2007 -- sponsored by U.S. Bankruptcy Administrator (Anniston, Alabama);

“Rescission Rights under TILA” August 9, 2007 -- sponsored by Alabama Association for Justice;

“How to Handle an Identity Theft Case” May 23, 2006 -- sponsored by Baldwin County Bar Association;

“Identity Theft” August 17, 2006 -- sponsored by Alabama Association for Justice;

“ABC’s of Mortgage Lending: TILA, RESPA and HOEPA” September 22, 2006 -- sponsored by Mobile County Bar Association;

“Introduction to HOEPA” September 29, 2006 -- sponsored by Cumberland School of Law;

“Recognizing HOEPA Issues in Loan Settlements” November 29, 2006 -- sponsored by Legal Services of Alabama;

“Recognizing Mortgage Lending Violations” December 14, 2006 -- sponsored by Office of the Chapter 13 Trustee (Decatur, Alabama);

“Identity Theft” December 8, 2005 -- sponsored by Cumberland School of Law;

“Identity Theft” December 29, 2005 -- sponsored by Cumberland School of Law.

EX. B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CARL TYLER, JR., <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	CIVIL ACTION 08-00007-B
	:	
v.	:	
	:	
THE MORTGAGE OUTLET, INC.,	:	
	:	
Defendant.	:	

ORDER AND FINAL JUDGEMENT

This matter is before the Court on Plaintiffs Carl Tyler, Jr., Grace Kelly Tyler, Joe Cephus Prim and Lisa A. Prim' s Motion for Approval of Final Settlement (Doc. 26).

Upon consideration of all documents filed in support of Plaintiffs' Motion, including the supporting memorandum, the affidavit of L. Stephens Tilghman, attesting to the mailing of the Class Notice and the publication of the Notice, and the Motion for An Order Certifying a Settlement Class and Granting Preliminary Approval of Settlement Agreement; the Court having entered on June 24, 2008, an Order (Doc. 21) preliminarily certifying the Settlement Class¹, granting preliminary approval of the Settlement, and setting a date and time for the fairness hearing on Final Approval; and a hearing having been held before this Court on December 18, 2008

¹On September 12, 2008, the Court entered an Order amending the class definition set forth in the June 24, 2008 Preliminary Approval Order. (Doc. 25).

("the Fairness Hearing") to determine whether to grant the Final Approval Motion, to determine whether to grant Plaintiffs' Motion for Award for Attorneys Fees and Reimbursement of Costs and Award of Incentive Fee (Doc. 27), and to rule upon such other matters as the Court might deem appropriate,

IT IS HEREBY ORDERED, AND ADJUDGED AND DECREED AS FOLLOWS:

1. The Court has jurisdiction over the subject matter of this action², all members of the Settlement Class and Defendant pursuant to 29 U.S.C. § 1131.

2. The Court hereby approves the maintenance of this Action as an opt-out action pursuant to Fed.R.Civ.P. 23. The Settlement Class shall be divided into the following two subclasses:

Subclass A shall consist of those persons in the Class whose subject loan was closed between January 4, 2005 and January 4, 2008 and who do not fall within Subclass B.

Subclass B shall consist of those persons in the Class whose subject loan was closed between January 4, 2005 and January 4, 2008, and who meet the following criteria: i) the loan was secured by a lien on their principal residence; ii) the loan

²Plaintiffs Carl and Grace Kelly Tyler instituted this action on January 4, 2008. (Doc. 1). Shortly thereafter, the Complaint was amended, and Plaintiffs Joe Cephus and Lisa A. Prim were added as Plaintiffs. (Doc. 5). Plaintiffs allege that The Mortgage Outlet, Inc. violated the Truth-in-Lending Act by failing to disclose the payment schedule (e.g., "monthly") and by understating the finance charge by \$100. The Mortgage Outlet, Inc. denies any and all claims and contentions.

proceeds were not used to purchase the home; iii) the home was still owned by the class member as of January 4, 2008; and iv) the borrower received a Truth-in-Lending Disclosure Statement at the closing of the loan which did not disclose the payment period (such as "monthly") of the loan.

The definition of the Settlement Class is sufficiently precise and proper notice was provided to the Settlement Class.

3. The Court finds that the prerequisites for a class action under Fed.R.Civ.P. 23 have been satisfied in that:

a. The Settlement Class, consisting of more than four thousand members is so numerous that joinder of all its members would be impracticable;

b. There are questions of fact and law common to the Settlement Class;

c. Named Plaintiffs, Carl Tyler, Jr., Grace Kelly Tyler, Joe Cephus Prim and Lisa A. Prim, are members of the Settlement class and their claims are typical of the claims of the Settlement Class;

d. The Named Plaintiffs are suitable for appointment as representatives of the Settlement Class and have and will fairly and adequately protect the interests of the Settlement Class in that (i) the interests of the named Plaintiffs and the nature of their claims are consistent with those of the members of the Settlement Class; (ii) there appears to be no conflicts between or among the Named

Plaintiffs and the Settlement Class; and (iii) the Named Plaintiffs have retained qualified, reputable counsel who are experienced in the matters before the Court;

e. The prosecution of separate actions by individual members of the Settlement Class would create a risk of inconsistent or varying adjudications as to individual class members, that would establish incompatible standards of conduct for the party opposing the claims asserted in the Action;

f. The prosecution of separate actions by individual members of the Settlement Class would create a risk of inconsistent or varying adjudications as to individual class members that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede those persons' ability to protect their interests;

g. Earl P. Underwood, Jr. and James D. Patterson are appointed as Settlement Class Counsel. Class counsel are appropriately qualified and suitable for appointment to represent the Settlement Class and Class Counsel has committed the necessary resources to represent the Settlement Class.

4. In accordance with Fed.R.Civ.P. 23 and the requirements of due process, the Settlement Class has been given proper and adequate notice of³: the Settlement Agreement, the Fairness Hearing

³Notice was given by first-class mail to each suspected Settlement Class member beginning on October 17, 2008. Additionally, the Notice was published in USA Today on October 7,

and the Motion for Award for Attorneys Fees and Reimbursement of Costs and Award of Incentive Fee, such notice having been carried out in accordance with the Preliminary Approval Order. The notice and notice methodology implemented pursuant to the Settlement Agreement and the Court's Preliminary Approval Order, as amended, a) constituted the best practicable notice; b) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the litigation, their right to opt out of the settlement, and their right to appear at the Fairness Hearing; c) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice; and d) met all applicable requirements of the Federal Rules of Civil Procedure, and any other applicable law.

5. Twelve persons opted out of the class (See Doc. 26, Att. 1, Ex. A); however, no members of the Settlement Class filed objections to the Settlement Agreement.

6. The Court determines that the Settlement Agreement was negotiated vigorously, in good faith, and at arm's length by the Named Plaintiffs and Class Counsel on behalf of the Settlement Class members. The Court finds that the Named Plaintiffs have acted independently and that their interests are identical to the interests of the Settlement Class members.

7. The Settlement Agreement in this action warrants final

2008. (Doc. 26, Att. 1).

approval pursuant to Federal Rule of Civil Procedure 23 because it is fair, adequate and reasonable to those it affects and is in the public interest based upon a) the likelihood of success on the merits weighed against the amount and form of relief offered in the Settlement; b) the risks, expense, and delay of further litigation; c) the judgment of experienced counsel who have competently evaluated the strength of their proofs; d) the amount of discovery conducted and the character of the evidence uncovered; e) the fairness of the settlement to the unnamed class members; f) the lack of objections to the Agreement; g) the fact that the Settlement is the product of extensive arm's length negotiations; and h) the fact that this Settlement is consistent with the public interest.

8. The Final Approval Motion is hereby GRANTED; and the Settlement is hereby APPROVED as fair, reasonable, adequate, in the best interests of the Settlement Class members and in the public interest. The terms of the Settlement are hereby determined to be fair, reasonable and adequate.

9. In accordance with the terms of the Settlement Agreement, The Mortgage Outlet shall pay the Settlement Amount set forth in paragraph 2.2 of the Settlement Agreement.

10. The Named Plaintiffs and each Settlement Class Member shall be deemed to have granted the releases set forth in paragraph 4 of the Settlement Agreement.

11. The Court finds that the payment of \$4000 jointly to Carl

and Grace Kelly Tyler, and \$4000 jointly to Joe Cephus and Lisa A. Prim is fair and reasonable, under the circumstances, for their service as class representatives. The record reflects that the parties engaged in limited informal discovery, and the named Plaintiffs were not required to respond to formal discovery or to prepare and give testimony at a deposition or in Court. Accordingly, the Court finds that the \$4000 joint payment to Plaintiffs Carl and Grace Tyler and the \$4000 joint payment to Plaintiffs Joe and Lisa Prim is reasonable under the circumstances. Said payments shall be made from the Settlement Amount, and in addition to any compensation payable as Class Members⁴.

12. This Litigation is dismissed with prejudice as to the Named Plaintiffs and all members of the Settlement Class (except that the dismissal is without prejudice as to Settlement Class Members who have obtained proper and timely exclusion from the Settlement Class, listed as Doc. 26, Att. 1, Ex. A), without fees or costs except those as directed by the Court.

13. This Court retains continuing jurisdiction over this action, the Named Plaintiffs, all members of the Settlement Class, and The Mortgage Outlet to determine all matters relating in any way to this Final Judgment and Order, the Preliminary Approval Order, or the Settlement Agreement, including but not limited to their

⁴Plaintiffs' request for attorneys' fees and costs is addressed in a separate Order.

administration, implementation, interpretation, or enforcement.

14. The Named Plaintiffs and all members of the Settlement Class (except those persons listed on Doc. 26, Att. 1, Ex. A) are permanently enjoined from commencing or prosecuting any action asserting any of the Released Claims (as defined in the Settlement Agreement) against The Mortgage Company and/or against any of the other Released Persons (as defined in the Settlement Agreement), either directly, representatively, derivatively, or in any other capacity, whether by complaint, counterclaim, defense, or otherwise, in any local, state, or federal court, or in any agency or other authority or forum wherever located.

15. The parties to the Settlement Agreement shall carry out their respective obligations thereunder.

16. In the event that (i) the Settlement Agreement is terminated pursuant to its terms; (ii) the Settlement Agreement, the Preliminary Approval Order, and this Final Order and Judgment do not for any reason become effective; or (iii) the Settlement Agreement, Preliminary Approval Order, and Final Order and Judgment are reversed, vacated or modified in any material respect, then (a) any and all orders entered pursuant to the Settlement Agreement shall be deemed vacated, including without limitation, the certification of the Settlement Class and all other relevant portions of this Order, (b) the instant action shall proceed as though the Settlement Class had never been certified, and (c) no

reference to the prior Settlement Class, or any documents related thereto, shall be made for any purpose; provided, however, that if a party to the Settlement Agreement appeals a ruling disapproving the Settlement Agreement and the Settlement Agreement is upheld on appeal, the Settlement Agreement and Final Order and Judgment shall be given full force and effect according to their terms. In the event the settlement does not become final in accordance with the terms of the Settlement Agreement, this Final Order and Judgment shall be void and shall be deemed vacated. The Mortgage Outlet retains the right to oppose class certification if the settlement is vacated or terminated for any reason, and the doctrine of res judicata and/or collateral estoppel shall not be applied.

17. Neither the Settlement Agreement, this Final Order and Judgment, nor any of their provisions, nor any of the documents (including but not limited to drafts of the Settlement Agreement, the Preliminary Approval Order or the Final Judgment and Order), negotiations, or proceedings relating in any way to the settlement, shall be construed as or deemed to be evidence or an admission or concession of any kind by any person, including The Mortgage Outlet, and shall not be offered or received in evidence, or subject to discovery, in this or any other action or proceedings except in an action brought to enforce its terms or except as may be required by law or court order.

DONE this **7th** day of **January, 2009**.

 /s/ SONJA F. BIVINS
UNITED STATES MAGISTRATE JUDGE

MIME-Version:1.0
From:efile_information@alsd.uscourts.gov
To:efile_notice@alsd.uscourts.gov
Bcc:
--Case Participants: Earl P. Underwood (dlangford@alalaw.com, epunderwood@gmail.com, sklopf@alalaw.com, stodd@alalaw.com), Kenneth J. Riemer (clw@alaconsumerlaw.com, kjr@alaconsumerlaw.com), James Donnie Patterson (dlangford@alalaw.com, jpatterson@alalaw.com, sklopf@alalaw.com), James B. Newman (cer@helmsinglaw.com, elm@helmsinglaw.com, jbn@helmsinglaw.com, mjb@helmsinglaw.com), Magistrate Judge William E. Cassady (efile_cassady@alsd.uscourts.gov), Senior Judge Charles R. Butler, Jr (efile_butler@alsd.uscourts.gov)
--Non Case Participants:
--No Notice Sent:

Message-Id:1279677@alsd.uscourts.gov
Subject:Activity in Case 1:09-cv-00563-CB-C Dalton v. Cardworks Services, LLC Order on Motion for Extension of Time
Content-Type: text/html

U.S. District Court

Southern District of Alabama

Notice of Electronic Filing

The following transaction was entered on 8/31/2010 at 11:25 AM CDT and filed on 8/31/2010

Case Name: Dalton v. Cardworks Services, LLC

Case Number: 1:09-cv-00563-CB-C

Filer:

Document Number: 20(No document attached)

Docket Text:

ENDORSED ORDER granting [18] Motion for Extension of Time; granting [18] Motion for Extension of Time to File Document. Signed by Magistrate Judge William E. Cassady on 8-31-10. (Cassady, William)

1:09-cv-00563-CB-C Notice has been electronically mailed to:

James B. Newman jbn@helmsinglaw.com, cer@helmsinglaw.com, elm@helmsinglaw.com, mjb@helmsinglaw.com

Kenneth J. Riemer kjr@alaconsumerlaw.com, clw@alaconsumerlaw.com

Earl P. Underwood epunderwood@gmail.com, dlangford@alalaw.com, sklopf@alalaw.com, stodd@alalaw.com

James Donnie Patterson jpatterson@alalaw.com, dlangford@alalaw.com, sklopf@alalaw.com

1:09-cv-00563-CB-C Notice has been delivered by other means to:

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**SUSSI DALTON, Individually and
on behalf of all similarly situated
individuals,**

Plaintiff,

VS.

CARDWORKS SERVICING, LLC.

Defendant.

CASE NO. 09-00563-CB-C

**PLAINTIFF’S BRIEF IN SUPPORT OF PRELIMINARY
APPROVAL OF CLASS SETTLEMENT**

Plaintiff, individually and on behalf of the proposed class, presents this brief and memorandum in support of preliminary approval of the proposed settlement herein.

I. INTRODUCTION, BACKGROUND OF LITIGATION, AND SUMMARY OF SETTLEMENT

The initial Complaint in this action was filed on August 28th 2009. Plaintiff contends that CardWorks engaged in unlawful debt collection practices by failing to properly make the disclosures required by the Fair Debt Collection Practices Act (“FDCPA”). Specifically, Plaintiff alleged that certain language used in Exhibit “A,” attached to the proposed settlement agreement, Ex. 1 to Doc 16, improperly disclosed the right of a consumer to dispute a debt.

CardWorks has denied and continues to deny any and all claims and contentions alleged by the Plaintiff in this litigation and continues to deny all charges of wrongdoing

or liability against it arising out of any of the conduct, disclosures, acts, or omissions alleged, or that could have been alleged, in this litigation.

The settlement calls for the establishment of a \$100,000 settlement fund to be divided, after payment of fees and expenses, amongst approximately 18,500 potential class members who elect to affirmatively “opt in” to the settlement class. See Ex. 1 to Doc. 16 at p. 4.

Through formal and informal discovery, Plaintiff’s counsel examined CardWorks’s practices. Counsel has made a thorough and independent investigation of the facts and law relating to the controversies between the parties. Plaintiff and her counsel have concluded that the outcome of the controversies existing between the parties cannot be ascertained with certainty and that it is in the best interests of the Plaintiff and the Settlement Class to resolve their claims against CardWorks upon the terms in this Settlement Agreement.

The settlement proposes a nationwide class and provides for compensation to each class member who chooses to “opt in” or become a member of the class. Potential class members who do not “opt in” are not bound by the settlement in any way. Although it denies any violation of the FDCPA, CardWorks has admitted, for purposes of this settlement, that it mailed the disputed collection letter to approximately 18,500 consumers during the class period.

**II. THE PROPOSED SETTLEMENT CLASS MEETS THE REQUIREMENTS OF
RULE 23 AND SHOULD BE APPROVED**

The settlement class would consist of all persons in the United States who received, from CardWorks, the form collection letter, annexed as Exhibit “A” to the

settlement agreement, on or after August 28th 2008 who have affirmatively “opted-in” to the settlement (the “Settlement Class”).

A. The Four Prerequisites of Rule 23(a) Are Clearly Satisfied.

Rule 23(a) contains four prerequisites for class certification: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. Fed.R.Civ.P. 23(a). In order for a class to be certified, it must satisfy each of these four prerequisites and, in addition, must fall within one or more of the three subdivisions of Rule 23(b). This Class satisfies all of the requirements of Rule 23(a) as discussed by the Court in *In re Commercial Tissue Prods.*, 183 F.R.D. 589 (N.D. Fla. 1998).

1. Numerosity.

The parties estimate that the Class for which certification is sought contains over 18,000 potential members. Thus, the requirement of numerosity set forth in Rule 23(a)(1) is clearly met.

2. Commonality.

The second prerequisite for maintaining a case as a class action is that there be “questions of law or fact common to the class. . .” F.R.Civ.P 23(a)(2). The common and only issue here is, whether or not the disputed collection letters comply with the FDCPA. Commonality is satisfied when there is at least one issue whose resolution will affect all or a significant number of the putative class members. *Drayton v. Western Auto Supply Co.*, 203 F.R.D. 520, 526 (M.D. Fla. 2000). Federal courts recognize that the requirement under Rule 23(a)(2) that “questions of law or fact common to the class” exist is to be read liberally. *See, e.g. Armstead v. Pingree*, 629 F.Supp. 273, 280 (M.D. Fla. 1986). Since there is only one issue the commonality requirement is met.

3. Typicality.

The third prerequisite for maintaining a class action is that the claims of the class representatives be “typical of the claims or defenses of the class...” F.R.Civ.P. 23(a)(3). The typicality requirement, like commonality, is not demanding. *In re Disposable Contact Lens Antitrust Litig.*, 170 F.R.D. 524 (M.D. Fla. 1996). “Typicality” does not mean that the claims of the representative parties must be identical to those of the absent class members. *See In re Commercial Tissue Products, supra* at 593. Rather, courts have held that typicality is satisfied where the representative plaintiff’s claims arise out of the same event or course of conduct as the other class members’ claims and are based on the same legal theory. *Id* at 594; *CV Reit, Inc. v. Levy*, 144 F.R.D. 690, 696 (S.D. Fla. 1992); *Drayton*, 203 F.R.D. at 527. Since Mrs. Dalton received the disputed collection letter, she is, therefore, typical.

4. Adequacy of Representation.

Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the interests of the class.” The named plaintiff must show that she has interests common, and not antagonistic, to the interests of the class and that plaintiff’s attorneys are qualified, experienced, and generally able to conduct the litigation. *In re Commercial Tissue Products, supra* at 594-595; *CV Reit, Inc., supra* at 698. The named Plaintiff has and will pursue the claims and settlement vigorously. See Plaintiff’s declaration filed herewith as exhibit “A” and incorporated herein by reference.

The court must also determine whether Plaintiff’s counsel possesses the qualifications and experience to pursue the legal claims and exhibits the desire to prosecute vigorously a class action. Rule 23(g), Fed. R. Civ. P. (2004); *In re Ins. Mgmt.*

Solutions Group, Inc., 206 F.R.D. 514, 516 (M.D. Fla. 2002). Plaintiff's counsel has committed the necessary resources to investigating and pursuing the claims of the absent members of the Class; is committing the resources necessary to fully protect the members of the Class and is experienced in litigating complex cases such as this. The undersigned has had other class settlements approved in this district and is otherwise experienced and qualified. See, Doc 19, declaration of Earl P. Underwood, Jr. The members of the Class are more than adequately represented by the Plaintiff and her counsel in this cause.

B. The Class Should be Certified Under Rule 23(b)(3) Because the Common Questions Predominate and A Class Action Is Superior To Other Available Methods For Resolving This Controversy.

If the prerequisites of Rule 23(a) are satisfied, an action can be maintained as a class action if it falls within one of the three subdivisions of Rule 23(b). Rule 23(b)(3) provides as follows:

(b) **Class Actions Maintainable.** An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

....

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy....

Fed. R. Civ. P. 23(b).

In this case, the issues of fact and law common to the Class predominate over any individual issues. Furthermore, the large size of the Class and the small amount of damages involved in each individual claim make a class action the best or only way to fairly and efficiently resolve this controversy. Thus, this case can and should be certified as a class action pursuant to Rule 23(b)(3).

1. Common Issues Predominate.

Plaintiff's claims satisfy the requirements of Rule 23(b)(3) that common questions of law or fact predominate over individual questions and that a class action is superior to other available methods of adjudication. As the Supreme Court noted in *Amchem Products, Inc v. Windsor*, 521 U.S. 591, 624 (1997), "predominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws." As noted previously, the claims of the class members arise from CardWorks's actions, all of which were taken as a matter of company-wide practice and procedure. Plaintiff alleged that CardWorks violated the FDCPA requirements by failing to provide adequate notice of the right to dispute a debt to consumers. Thus, the Class members' claims arise from a nucleus of operative facts and involve questions of law common to all members of the Class. Individual issues with respect to the claims asserted are virtually nonexistent.

2. A Class Action Is Superior To Other Available Methods of Resolution

Generally, a class action is superior to other methods of adjudication where the individual claims would yield such small recoveries that individual actions would not be economically viable. *See, e.g. In Re Inter-Op Hip Prophesies Liability Litigation*, 204 F.R.D. 330, 348 (N.D. Ohio 2001) ("The 'most compelling rationale for finding superiority in a class action...[is] the existence of a negative value suit'...Negative value claims are claims in which the costs of enforcement in an individual suit would exceed the expected individual recovery.") The United States Supreme Court explicitly recognized this "negative value" factor in its decision in *Amchem Prod. Inc. v. Windsor*, 521 U.S. 591 (1997). There, the Court observed that a principle justification for class actions is "to overcome the problem that small recoveries do not provide the incentive for

any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor." *Id.* at 617, (quoting *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997)). This case, of course, is the paradigm of a negative value case. The size of each class member's damage claim, whether for actual damages or statutory damages, is too small to make individual litigation an economically viable alternative. In fact, few if any individual actions have ever been brought against Defendant for the violations at issue in this case. A class action is not only the superior method for resolving this controversy, it is the *only* viable way for the Plaintiffs to seek redress for the violations of the FDCPA.

The superiority of proceeding as a class action is further demonstrated by the efficiencies inherent in adjudicating the common issues in a single action. Instead of multiple cases involving the same facts and the same issues, needlessly wasting judicial resources, here is a single action in which all those disputes can find resolution.

III. THE SETTLEMENT SATISFIES THE REQUIREMENTS OF RULE 23(e) AND SHOULD BE PRELIMINARILY APPROVED

The law generally favors and encourages the settlement of class actions. *Ressler v. Jacobson*, 822 F.Supp. 1551, 1552 (M.D.Fla.1992); *Florida Trailer and Equip. Co. v. Deal*, 284 F.2d 567, 571 (5th Cir. 1960). In considering a proposed settlement of a class action, federal courts normally follow a two-step approach. "First, the judge reviews the proposal preliminarily to determine whether it is sufficient to warrant public notice and a hearing. If so, the final decision on approval is made after the hearing." *Manual for Complex Litigation*, § 13.14 (4th ed. 2004). The decision to approve or reject the

settlement is committed to the sound discretion of the trial court. *Detroit Police Officers Assoc. v. Young*, 920 F.Supp. 755 (E.D. Mich. 1995).

A. The Settlement is Fair, Reasonable, and Adequate.

In deciding whether to approve a proposed settlement, the reviewing court must ultimately find that the proposed settlement is “fair, reasonable, and adequate.” *Clark Equip. Co. v. Int’l Union, Allied Indus. Workers*, 803 F.2d 878, 880 (6th Cir. 1986) *cert. denied sub nom., Jones v. Clark Equip. Co.*, 480 U.S. 934 (1987), citing, *Officers for Justice v. Civil Svc. Comm’n.*, F.2d 615, 625 (9th Cir. 1982).

Under the FDCPA class recovery is limited to the lesser of \$500,000 or 1% of the net worth of the Defendant. 15 U.S.C. § 1692k(a)(2)(B). Here counsel for the defendant has represented to Plaintiff’s counsel that 1% of CardWorks net worth during the relevant period was \$109,000. With the settlement fund to be \$100,000, almost the maximum recovery under the statute the settlement is certainly adequate. See proposed settlement agreement at ¶¶ 6 and 8.

In addition, there is a split in the circuits on whether or not CardWork’s conduct even violates the FDCPA. See *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 130 S. Ct. 1605, 1610 (U.S. 2010) “We likewise express no view about whether inclusion of an ‘in writing’ requirement in a notice to a consumer violates § 1692g, as that question was not presented in the petition for certiorari. Compare *Graziano*, *supra*, at 112 (reading § 1692g(a)(3) to require that ‘any dispute, to be effective, must be in writing’), with *Camacho*, *supra*, at 1082 (under § 1692g(a)(3), ‘disputes need not be made in writing’)” Courts “should keep in mind the unique ability of class and defense counsel to assess the potential risks and rewards of litigation, and a presumption of correctness is said to attach

to a class settlement reached in arms length negotiations between experienced, capable counsel after meaningful discovery.” Manual for Complex Litig., § 30.41 (2d Ed. 1985); see also *Cotton*, 559 F.2d at 1330; *Lelsz v. Kavanagh*, 783 F. Supp. 286 (N.D. Tex. 1991), *aff’d*, 983 F.2d 1061 (5th Cir.). *Canupp v. Sheldon*, 2009 U.S. Dist. LEXIS 113488, 38-39 (M.D. Fla. Nov. 23, 2009)

Finally, any potential class member who chooses not to become a member of the Settlement Class need not do one thing and his or her full rights will be preserved.

B. The Notice Program is Reasonable.

Rule 23(e) specifies that “[T]he court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement,...” Fed. R. Civ. P. 23(e). Due process likewise requires that class members be given notice and an opportunity to be heard. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). The method and manner of notice process is “left to the discretion of the court subject only to the broad ‘reasonableness’ standards imposed by due process.” *Grunin v. Int’l House of Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975), *cert. denied*, 423 U.S. 864 (1975).

The Notice Plan, which is described in proposed settlement agreement at ¶¶ 12 and 13, fully complies with Rule 23(e) and with the requirements of due process. The Notice will be sent by first class mail, is written in plain English and includes: (i) a description of the Class, (ii) a description of the proposed Settlement, (iii) the identity of Class Counsel, (iv) the Fairness Hearing date, (v) a statement of the deadlines for filing objections to the Settlement, for submitting a claim, and for filing requests for inclusion or “opt in”, (vi) the consequences of not opting in, (vii) a statement of CardWorks’s responsibility for Class Counsel’s fees and expenses and (ix) how to obtain further

information.

The form and content of the Notice, together with the manner of dissemination set forth above, is reasonably calculated to reach and inform all Class members. It is the “best notice practicable” under the circumstances and more than satisfies the requirements of due process and Rule 23.

III. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Court issue an order certifying, for settlement purposes only, the Class described above, granting preliminary approval of the Settlement and directing that Notice be given as set forth in the Settlement Agreement.

IV. CONCLUSION

When applying the factors approved by the Supreme Court to the proposed settlement, it is clear that the settlement is within the possible range of recovery, the risks of continued litigation are outweighed by the benefits of the settlement, and the best notice practicable under the circumstances was given to the class. Further, the proposed Settlement Class meets the requirements of Rule 23. For these reasons, the Court should preliminarily approve the Settlement Agreement as fair, reasonable, adequate and in the best interests of the class.

/s/ Earl P. Underwood, Jr.
Earl P. Underwood, Jr. (UNDEE6591)
Underwood & Riemer, PC
21 South Section St.
Fairhope, Alabama 36532
Voice: 251.990.5558
Fax: 251.990.0626
epunderwood@alalaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this, the 6th day of September 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Earl P. Underwood, Jr.
Earl P. Underwood, Jr.

6. I understand that a class action is a lawsuit brought by at least one person, myself, on behalf of a group of people who have been treated in the same illegal manner by the Defendant.

7. I am willing to be a representative of the class and I understand:

a) That as a class representative I have the responsibility to see that the lawyers prosecute the case on behalf of the entire class, not just myself.

b) That I may have to testify at a deposition and/or trial and provide documents and information for use in the case.


c) That the case cannot be dropped or settled without protecting the class members. This normally means that the other members of the class have to get a fair monetary settlement of their claims.

d) That the Court has to approve any settlement or disposition on behalf of the class.

8. I have arranged for my attorneys to advance all costs, including the cost of notification of the class, of this action while I remain responsible for my *pro rata* share of these costs.

9. I understand that courts have sometimes awarded people money for serving as the class representative, but that I am not entitled to such money as a matter of right, and that I have not been promised or guaranteed money for being the class representative.

10. I am not employed by or related to any of my attorneys. They will be paid as directed by the Court, if the case is successful, out of Defendant's assets or the funds recovered for the class.


Sussi Dalton

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SUSSI DALTON, individually and
on behalf of all similarly situated
individuals

:

Plaintiff,

:

vs.

:

CA 09-00563-CB-C

CARDWORKS SERVICING, LLC,

:

Defendant.

ORDER

This action was referred to the undersigned for a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), and is before the Court on the parties' Joint Motion for Preliminary Approval of Class Settlement Agreement (Doc. 16) ("Joint Motion"), filed August 4, 2010; the Declaration of Earl P. Underwood, Jr. in Support of Plaintiff's Motion for Preliminary Approval (Doc. 19), filed August 30, 2010; and Plaintiff's Brief in Support of Preliminary Approval of Class Settlement (Doc. 21), filed September 6, 2010.

As the undersigned has previously stated, "[j]udicial review of a proposed class action settlement is a two-step process: preliminary approval and a subsequent fairness hearing," *Smith v. Wm. Wrigley Jr. Co.*, No. 09-60646-CIV, 2010 WL 2401149, at *1 (S.D. Fla. June 15, 2010) (citations omitted), and our initial task is to make a "preliminary evaluation of the fairness of the settlement before directing that notice be given to the settlement class." *Id.*

Our preliminary evaluation, thus, necessarily includes determining whether a class can and should be certified, consistent with the requirements of Rule 23. *See Outten v. Capital Mgmt. Servs., L.P.*, No. 09-22152-CIV, 2010 WL 2194442, at *1-*5 (S.D. Fla. Apr. 9, 2010) (addressing Rule 23 requirements for a settlement class in a case arising out of alleged violations of the FDCPA). “For a district court to certify a class action, the named plaintiffs must have standing, and the putative class must meet each of the requirements specified in Federal Rule of Civil Procedure 23(a), as well as at least one of the requirements set forth in Rule 23(b).” *Klay v. Humana, Inc.*, 382 F.3d 1241, 1250 (11th Cir. 2004). Rule 23(a) requires a putative class to meet four requirements: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. *See* FED. R. CIV. P. 23(a); *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1265 (11th Cir. 2009). Where, as here, certification is sought pursuant to Rule 23(b)(3), a court must make two additional findings, specifically: “(1) that common questions of law or fact predominate over questions affecting only individual members (‘predominance’); and (2) that a class action is superior to other available methods for adjudicating the controversy (‘superiority’).” *Vega*, 564 F.3d at 1265.

“Before analyzing the Rule 23(a) requirements, or as part of the numerosity inquiry, a court must determine whether the class definition is adequate.” *County of Monroe, Fla. v. Priceline.com, Inc.*, 265 F.R.D. 659, 666 (S.D. Fla. 2010) (citation and internal quotation marks omitted). Here, the Settlement Class is defined as:

[A]ll persons in the United States who received from CardWorks the form collection letter [that Plaintiff received], on or after August 28, 2008 and who

have affirmatively “opted-in” to [the] Settlement Agreement.

(Doc. 16, Ex. 1 [proposed Settlement Agreement], p. 1.)

The undersigned has identified one major problem with the proposed definition. To the extent the Settlement Agreement contemplates an “opt-in” class (as opposed to an “opt-out” class), it is my view that such a class cannot be certified under Rule 23. *Cf. Anderson v. Cagle’s, Inc.*, 488 F.3d 945, 950 n.3 (11th Cir. 2007) (“Unlike class actions governed by Rule 23 of the Federal Rules of Civil Procedure, in which potential class members may choose to opt out of the action, [Fair Labor Standards Act] collective actions require potential class members to notify the court of their desire to opt in to the action. 29 U.S.C. § 216(b) (2000).”). As the court in *Andrews Farms v. Calcot, Ltd.*, 258 F.R.D. 640 (E.D. Cal. 2009), explained:

“Rule 23(c) contains a so-called ‘opt out’ requirement, mandating that members of a class certified under Rule 23(b)(3) be afforded an opportunity to ‘request exclusion from that class.’” *Estate of Kern v. Siemens Corp.*, 393 F.3d 120, 124 (2nd Cir. 2004). “Not only is an ‘opt in’ provision not required, but substantial legal authority supports the view that by adding the ‘opt out’ requirement to Rule 23 in the 1966 amendments, Congress **prohibited** ‘opt in’ provisions by implication.” *Id.* (emphasis in original); *see also, Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812, 105 S. Ct. 2965, 86 L. Ed. 2d 628 (1985) (requiring class members to opt in is not mandated by due process and would impede judicial efficiency); *Clark v. Universal Builders, Inc.*, 501 F.2d 324, 340 (7th Cir. 1974) (“The requirement of an affirmative request for inclusion in the class is contrary to the express language of Rule 23(c)(2)(b)”).

Id. at 656; *see also H.W. Urban GmbH v. Republic of Argentina*, No. 02 Civ. 5699(TPG), 2003 WL 21058254, at *2 (S.D.N.Y. May 12, 2003) (court suggested “that it might be desirable to have the class consist of persons who ‘opt in,’ if class action treatment is

permitted”; citing *Shutts*, however, court agreed with plaintiffs that such a class would be “contrary to Rule 23”); *In re Katrina Canal Breaches Consol. Litig.*, Civil Action Nos. 05-4181, *et al.*, 2009 WL 1649501, at *5 (E.D. La. June 9, 2009) (“opt-out nature of Rule 23(b)(3) class actions provides some benefits to unnamed class members that do not inure to opt-in class members, such as tolling while class certification is pending”; [i]t would thus appear inequitable for a Rule 23 class to be an ‘opt-in’ class while enjoying tolling and any other ‘opt-out’ benefits”) (citation omitted).

To the extent the parties are attempting to use a proof of claim/claims made mechanism to require class members to submit claims in order to receive compensation, the submission of claim forms is not the same as “‘opt[ing]-in’ to the settlement” (Doc. 16, Ex. 1, p. 1). However—because the Court is certifying a settlement class—including in the notice to class members an invitation to the members to submit claims may be proper. *See Andrews Farms*, 258 F.R.D. at 656 (“Based on well-settled authority, this Court will employ an opt out procedure, as provided by Rule 23(c), and denies Defendants’ request for an opt in class action. Defendants may, however, raise a post-liability request, pursuant to Fed. R. Civ. P. 23(d)(1)(B), for this Court to order addition notice to class members to invite members to submit claims.”); *Saunders v. Berks Credit and Collections, Inc.*, No. CIV. 00-3477, 2002 WL 1497374 (E.D. Pa. July 11, 2002) (certified FDCPA settlement class) (“Under the terms of the settlement, [defendant sent] pro rata distributions . . . to each [class member] who did not opt out and who submitted a timely, valid claim form.”).

Rather than recommending that the District Court deny the Joint Motion, the undersigned invites the parties to explain the propriety of employing an “opt-in” class here or, if the parties are amenable to using an “opt-out” class with a claims made mechanism, how this change would, if at all, affect the proposed settlement. As such, the parties are **ORDERED** to appear before the undersigned to discuss these issues on **Tuesday, October 5, 2010 at 10:00 a.m.**, in Courtroom 3A, United States Courthouse, Mobile, Alabama.

DONE and ORDERED this the 21st day of September, 2010.

s/ WILLIAM E. CASSADY
UNITED STATES MAGISTRATE JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SUSSI J. DALTON,	:	
Plaintiff(s),	:	
vs.	:	CIVIL ACTION 09-0563-CB-C
CARDWORKS SERVICES, LLC,	:	
Defendant(s).	:	

ORDER

The status conference presently scheduled for October 5, 2010, before the undersigned (Doc. 22), is hereby RESCHEDULED for October 12, 2010, at 10:00 a.m., in Courtroom 3A.

DONE AND ORDERED this 22nd day of September, 2010.

s/WILLIAM E. CASSADY
UNITED STATES MAGISTRATE JUDGE

MIME-Version:1.0
From:efile_information@alsd.uscourts.gov
To:efile_notice@alsd.uscourts.gov
Bcc:
--Case Participants: Earl P. Underwood (dlangford@alalaw.com, epunderwood@gmail.com, sklopf@alalaw.com, stodd@alalaw.com), Kenneth J. Riemer (clw@alaconsumerlaw.com, kjr@alaconsumerlaw.com), James Donnie Patterson (dlangford@alalaw.com, jpatterson@alalaw.com, sklopf@alalaw.com), James B. Newman (cer@helmsinglaw.com, elm@helmsinglaw.com, jbn@helmsinglaw.com, mjb@helmsinglaw.com)
--Non Case Participants:
--No Notice Sent:

Message-Id:1300303@alsd.uscourts.gov
Subject:Activity in Case 1:09-cv-00563-CB-C Dalton v. Cardworks Services, LLC Status Conference
Content-Type: text/html

U.S. District Court

Southern District of Alabama

Notice of Electronic Filing

The following transaction was entered on 10/12/2010 at 10:29 AM CDT and filed on 10/12/2010

Case Name: Dalton v. Cardworks Services, LLC

Case Number: 1:09-cv-00563-CB-C

Filer:

Document Number: No document attached

Docket Text:

Minute Entry for proceedings held before Magistrate Judge William E. Cassady: Status Conference held on 10/12/2010. FTR Digital Audio Recording. (eec)

1:09-cv-00563-CB-C Notice has been electronically mailed to:

James B. Newman jbn@helmsinglaw.com, cer@helmsinglaw.com, elm@helmsinglaw.com, mjb@helmsinglaw.com

Kenneth J. Riemer kjr@alaconsumerlaw.com, clw@alaconsumerlaw.com

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James Donnie Patterson jpatterson@alalaw.com, dlangford@alalaw.com, sklopf@alalaw.com

1:09-cv-00563-CB-C Notice has been delivered by other means to:

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SUSSI DALTON, individually and	:	
on behalf of all similarly situated	:	
individuals	:	
 Plaintiff,	:	
 vs.	:	CA 09-0563-CB-C
 CARDWORKS SERVICING, LLC,	:	
 Defendant.	:	

ORDER

This action was referred to the undersigned for a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), and is before the Court on the parties' Joint Motion for Preliminary Approval of Class Settlement Agreement (Doc. 16) (the "Joint Motion"), filed August 4, 2010, and evidence and briefing filed in support thereof. (*See* Docs. 19 & 21.) On October 12, 2010, the undersigned conducted a hearing at which, among other things, the parties explained their view as to why this matter should be certified as an "opt-in" class under Rule 23.

As the undersigned has previously explained, the Court's initial responsibility is to make a "preliminary evaluation of the fairness of the settlement before directing that notice be given to the settlement class," *Smith v. Wm. Wrigley Jr. Co.*, No. 09-60646-CIV, 2010 WL 2401149, at *1 (S.D. Fla. June 15, 2010), which here necessarily includes determining

whether a class can and should be certified, consistent with the requirements of Rule 23. *See Outten v. Capital Mgmt. Servs., L.P.*, No. 09-22152-CIV, 2010 WL 2194442, at *1-*5 (S.D. Fla. Apr. 9, 2010) (addressing Rule 23 requirements for a settlement class in a case arising out of alleged violations of the FDCPA).

The novel approach advocated by the parties, under which only those class members who affirmatively “opt into” this action will be bound, presents a host a problems, and the arguments of the parties at the October 12, 2010 hearing did not change the undersigned’s view that an “opt-in” class cannot be certified consistent with the requirements of Rule 23.

First, an “opt-in” class is not authorized by—and may even violate—the express language of Rule 23. As the court in *Andrews Farms v. Calcot, Ltd.*, 258 F.R.D. 640 (E.D. Cal. 2009), explained:

“Rule 23(c) contains a so-called ‘opt out’ requirement, mandating that members of a class certified under Rule 23(b)(3) be afforded an opportunity to ‘request exclusion from that class.’” *Estate of Kern v. Siemens Corp.*, 393 F.3d 120, 124 (2nd Cir. 2004). “Not only is an ‘opt in’ provision not required, but substantial legal authority supports the view that by adding the ‘opt out’ requirement to Rule 23 in the 1966 amendments, Congress **prohibited** ‘opt in’ provisions by implication.” *Id.* (emphasis in original); *see also, Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812, 105 S. Ct. 2965, 86 L. Ed. 2d 628 (1985) (requiring class members to opt in is not mandated by due process and would impede judicial efficiency); *Clark v. Universal Builders, Inc.*, 501 F.2d 324, 340 (7th Cir. 1974) (“The requirement of an affirmative request for inclusion in the class is contrary to the express language of Rule 23(c)(2)(b)”).

Id. at 656; *see also H.W. Urban GmbH v. Republic of Argentina*, No. 02 Civ. 5699(TPG), 2003 WL 21058254, at *2 (S.D.N.Y. May 12, 2003) (court suggested “that it might be desirable to have the class consist of persons who ‘opt in,’ if class action treatment is

permitted”; citing *Shutts*, however, court agreed with plaintiffs that such a class would be “contrary to Rule 23”).

Second, requiring absent class members to affirmatively assert their rights to membership in this class action will effectively—because of the small nature of the recovery in this case—“freeze out” most of the absent class members. The Supreme Court explained the balance struck by Rule 23’s requirement that non-representative class members be given the opportunity to “opt-out” of—as opposed to “opt-in” to—class actions in *Shutts*—“The plaintiff’s claim may be so small, or the plaintiff so unfamiliar with the law, that he would not file suit individually, nor would he affirmatively request inclusion in the class if such a request were required by the Constitution. If, on the other hand, the plaintiff’s claim is sufficiently large or important that he wishes to litigate it on his own, he will likely have retained an attorney or have thought about filing suit, and should be fully capable of exercising his right to ‘opt out.’” *Shutts*, 472 U.S. at 813 (footnote omitted); *see also id.* at n.4 (“Requiring the individuals affirmatively to request inclusion in the lawsuit would result in freezing out the claims of people—especially small claims held by small people—who for one reason or another, ignorance, timidity, unfamiliarity with business or legal matters, will simply not take the affirmative step.” (quoting Benjamin Kaplan, *Continuing Work of the Civil Committee: 1966 Amendments of the Federal Rules of Civil Procedure (I)*, 81 HARV. L. REV. 356, 397-398 (1967))); *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1556-57 (11th Cir. 1986) (in the context of rejecting the use of the discovery sanction of dismissal against

non-representative class members who fail to cooperate, the Eleventh Circuit noted that “a discovery order threatening dismissal for non-compliance amounts to no more than an affirmative ‘opt-in’ device—that is, it requires passive class members to take positive action to stay in the suit,” and “[t]he Advisory Committee specifically rejected the practice of forcing absent class members to opt into a Rule 23 class action to secure its benefits”); *On the House Syndication, Inc. v. Federal Exp. Corp.*, 203 F.R.D. 452, 455 (S.D. Cal. 2001) (“In commenting on the duties of class members, the Supreme Court has noted that, generally speaking, ‘an absent class-action plaintiff is not required to do anything.’” (quoting *Shutts*, 472 U.S. at 810)).¹

Finally, while a traditional “class action, for settlement purposes, is superior to other available methods for *fairly and efficiently adjudicating [a] controversy and resolving all of*

¹ As explained in the September 21, 2010 Order, because the Court is being asked to certify a settlement class, including in the notice to class members an invitation to the members to submit claims is proper. *See Biben v. Card*, 789 F. Supp. 1001, 1006 (W.D. Mo. 1992) (where “class representative complie[s] with the due process requirements as explained by *Shutts*” by providing class members “notice of the class action and an opportunity to opt-out,” later in the proceeding “[a]sking class members to submit claims will not impede the prosecution of [a] class action”); *Andrews Farms*, 258 F.R.D. at 656 (“Based on well-settled authority, this Court will employ an opt out procedure, as provided by Rule 23(c), and denies Defendants’ request for an opt in class action. Defendants may, however, raise a post-liability request, pursuant to Fed. R. Civ. P. 23(d)(1)(B), for this Court to order addition[al] notice to class members to invite members to submit claims.”); *Saunders v. Berks Credit and Collections, Inc.*, No. CIV. 00-3477, 2002 WL 1497374 (E.D. Pa. July 11, 2002) (certified FDCPA settlement class) (“Under the terms of the settlement, [defendant sent] pro rata distributions . . . to each [class member] who did not opt out and who submitted a timely, valid claim form.”); *cf.* MANUAL FOR COMPLEX LITIGATION, THIRD, § 20.232 (“Class members should not, however, be required to submit proofs of claim *as a condition of membership in the class*, which would be equivalent to establishing an opt-in procedure.” (citing *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546 (11th Cir. 1986)) (emphasis added)).

the alleged claims,” Davis v. Abercrombie & Fitch Co., No. 08 CV 01859(PKC)(AJP), 2009 WL 1542552, at *2 (S.D.N.Y. June 2, 2009) (emphasis added), the proposed class action here is not. *Cf. Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1265 (11th Cir. 2009) (noting that where, as here, certification is sought pursuant to Rule 23(b)(3), a court must find “that a class action is superior to other available methods for adjudicating the controversy”). Because the parties’ “opt-in” approach fails to bind all class members who fail to submit a claim, it will likely result in thousands of potential claims going unresolved, which could lead to myriad new class actions arising from this defendant’s same conduct. Such a result would violate the purpose of class action litigation. *See, e.g., Donovan v. Univ. of Tex. at El Paso*, 643 F.2d 1201, 1206-07 (5th Cir. 1981) (“It is undisputed that the purpose of Rule 23 is to prevent piecemeal litigation to avoid: (i) a multiplicity of suits on common claims resulting in inconsistent adjudications; and (ii) the difficulties in determining *res judicata* effects of a judgment.”); *In re Ski Train Fire in Kaprun, Austria on Nov. 11, 2000*, 220 F.R.D. 195, 209 (S.D.N.Y. 2003), *reversed by Estate of Kern v. Siemens Corp.*, 393 F.3d 120, 124 (2nd Cir. 2004) (“It is axiomatic that the purpose of a class action is to resolve finally the claims of all members of a class so that future litigation need not occur.”).

Before converting this order into a Report & Recommendation to the District Court, recommending that the parties’ Joint Motion be denied, the undersigned requests that the parties reconsider structuring their proposed settlement to include an “opt-out” class, and present a revised settlement agreement and revised proposed class notice to the undersigned

on or before October 28, 2010.

DONE and ORDERED this the 14th day of October, 2010.

s/ WILLIAM E. CASSADY
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this, the 28th day of October, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Earl P. Underwood, Jr.
Earl P. Underwood, Jr.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SUSSI DALTON, individually and
on behalf of all similarly situated
individuals

:

Plaintiff,

:

vs.

:

CA 09-00563-CB-C

CARDWORKS SERVICING, LLC,

:

Defendant.

:

ORDER

On October 14, 2010, the undersigned issued an order (Doc. 24) setting forth his reasons for why the parties' proposed settlement class cannot be certified as an "opt-in" class under Federal Rule of Civil Procedure 23, and asked the parties to reconsider structuring their proposed settlement to include an "opt-out" class and present a revised settlement agreement and revised proposed class notice to the Court on or before October 28, 2010. On that date, Plaintiff filed their Unopposed Motion for Additional Time to File Proposed Settlement Pursuant to Court's Order of October 14, 2010 (Doc. 25), in which they inform the Court that "[t]he parties have conferred and have agreed to propose an 'opt-out' settlement," and request "an additional seven days to file the proposed settlement." (*Id.*)

For good cause shown, the undersigned **GRANTS** the Plaintiff's motion, and reminds the parties to submit a revised proposed class notice when they submit the revised proposed

class settlement. Both are now to be filed **no later than November 4, 2010**.

DONE and ORDERED this the 29th day of October, 2010.

/s WILLIAM E. CASSADY
UNITED STATES MAGISTRATE JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SUSSI DALTON, individually and)
on behalf of all similarly situated)
individuals,)

Plaintiff,)

vs.)

CARDWORKS SERVICING, LLC)

Defendant.)

CASE NO.: 09-CV-563

**JOINT MOTION FOR PRELIMINARY APPROVAL
OF CLASS SETTLEMENT AGREEMENT**

Come now the Plaintiff and Defendant CardWorks Servicing, LLC (“CardWorks”), each by and through their undersigned attorneys, and move this Court to enter an order providing preliminary approval of the settlement of this matter, and as grounds therefore shows the Court as follows:

1. Plaintiffs and CardWorks have entered into a Settlement Agreement, which is attached hereto as Exhibit 1, which completely resolves this matter. The Settlement Agreement is based upon the certification of a nationwide class of consumers to whom CardWorks sent a collection letter exemplified by Exhibit “A” to the settlement agreement. The terms of the settlement are fair, reasonable and adequate, and the Settlement Agreement is the product of extensive and vigorous negotiation conducted over several months of negotiations.

2. In determining whether to give final approval to the proposed settlement, the parties respectfully submit that the Court must find that the settlement is fair, adequate and reasonable, and not the product of collusion. In determining whether the settlement meets these goals, the parties respectfully submit that the following criteria should be examined:

- (a) The existence of fraud or collusion behind the settlement;
- (b) The complexity, expense and duration of the litigation;
- (c) The stage of proceedings and the amount of discovery concluded;
- (d) The probability of Plaintiff's success on the merits;
- (e) The range of possible recovery; and
- (f) The opinions of class counsel, class representatives and absent class members.

Leverso v. SouthTrust Bank, 18 F.3d 1527 (11th Cir. 1994).

3. When determining whether to approve a class action settlement, the parties respectfully submit that the Court conducts a two step process. First, the Court should make a preliminary fairness evaluation of the proposed settlement. See Manual for Complex Litigation, 4th § 21.632 (2004). This motion seeks such a preliminary approval, which should evaluate the likelihood that the Court will approve the settlement during its second review stage, after the completion of a full fairness hearing. During the preliminary evaluation, the Court should examine the submitted materials and determine whether the proposed settlement appears fair on its face. In re Corrugated Container Antitrust Litigation, 643 F.2d 195, 212 (5th Cir. 1981).

4. The settlement as proposed in the accompanying documents provides substantial relief to the proposed class. The settlement is the product of extensive and vigorous settlement negotiations. The settlement of this action will end lengthy and complex litigation, and provide meaningful and substantial relief to a nationwide class of consumers. As such, request is made that this Court issue its preliminary approval of the settlement, and allow notice to be issued as contemplated in the settlement documents.

WHEREFORE, Plaintiff and Defendant request an Order of this Court preliminarily approving the settlement as set forth herein, approving the notices attached to the settlement agreement, and such other and further orders as may be appropriate, the premises considered.

Done this 11th day of November, 2010.

/s/ Earl P. Underwood, Jr.¹
EARL P. UNDERWOOD, JR. (UNDEE6591)
Counsel for Representative Plaintiffs and the Class

OF COUNSEL:
Underwood & Riemer, PC
21 South Section Street
Fairhope, Alabama 36533
(251) 990-5558
Email: epunderwood@alalaw.com

¹ Attorney Earl P. Underwood, Jr., has given permission for his signature to be affixed to this document for filing with the Court.

s/James B. Newman

JAMES B. NEWMAN (NEWMJ8049)

Attorney for Defendant CardWorks Servicing, LLC

OF COUNSEL:

Helmsing, Leach, Herlong

Newman & Rouse

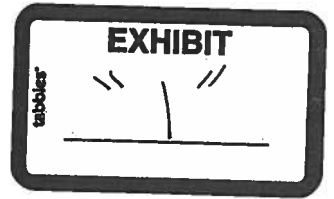
Post Office Box 2767

Mobile, Alabama 36652

(251) 432-5521

Email: jbn@helmsinglaw.com

270152



**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SUSSI DALTON, individually and)	
on behalf of all similarly situated)	
individuals	)	CASE No. 09-CV-563
Plaintiff,)	
)	
v.)	
)	
CARDWORKS SERVICING, LLC)	
)	
Defendant.)	

SETTLEMENT AGREEMENT

This Settlement Agreement, between Plaintiff, Sussi Dalton individually, and on behalf of a settlement class of similarly situated persons in the matter of Sussi Dalton v. CardWorks Servicing, LLC, and Defendant, CardWorks Servicing, LLC (“CardWorks”), was reached after arms-length negotiations between all parties, and is entered into as of November, 2010.

The class consists of all persons in the United States who received from CardWorks the form collection letter annexed hereto as Exhibit A, between August 28, 2008 and August 28, 2009 (the “Class”).

PREAMBLE

A. Plaintiff Sussi Dalton filed her Complaint in this action on August 28, 2009. The Complaint alleges that the debt collection letter at issue violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (“FDCPA”). The Complaint also claims that CardWorks’ alleged violation of the FDCPA renders it liable for statutory damages, costs, and reasonable attorneys’ fees.

B. CardWorks denies that it is liable in any way to Plaintiff or the Class and denies that its actions violated the FDCPA in any manner. CardWorks is, however, willing to enter into this Settlement Agreement to avoid the further expense and inconvenience of litigation, and has concluded that it is in its best interest to resolve and settle all claims which have been made or could be made against it by Plaintiff and the Class arising out of CardWorks' alleged violation of the FDCPA.

C. Plaintiff, through her attorneys, has made a thorough and independent investigation of the facts and law relating to the controversies between the parties. Plaintiff and her counsel have concluded that the outcome of the controversies existing between the parties cannot be ascertained with certainty and that it is in the best interests of the Plaintiff and the Class to resolve their claims against CardWorks upon the terms in this Settlement Agreement.

SETTLEMENT TERMS

NOW, THEREFORE, it is agreed by and between the undersigned that this lawsuit is settled, upon final approval by the District Court after a hearing, and upon entry of a final judgment of dismissal with prejudice as provided in this Settlement Agreement, all subject to the following terms and conditions:

1. This Settlement Agreement shall not be construed or be deemed to be an admission or concession by CardWorks of any liability or wrongdoing whatsoever, and CardWorks specifically denies that the conduct at issue gives rise to any such liability.

2. The parties agree to undertake and use their commercially reasonable efforts to effectuate this Settlement Agreement and to support and conclude the settlement described herein (the "Settlement"). As soon as practicable, the parties will

take all necessary steps to secure the Court's preliminary approval of this Settlement Agreement and after notice to all members of the Class, the parties will take all steps necessary to secure the final approval of the Settlement Agreement and the dismissal of the lawsuit with prejudice. For the purposes of this Settlement only, two or more members of the Class jointly obligated on the same debt shall be treated as a single Class member.

3. For purposes of settlement only, CardWorks agrees to the certification of the Class, pursuant to Fed.R.Civ.P. 23(b)(3).

4. For the purposes of settlement only, CardWorks agrees to the appointment of Sussi Dalton as class representative and the appointment of her attorneys, Underwood & Riemer, PC., and all attorneys who are, or have been, at any time from this date forward associated with said firm in any capacity, including but not limited to Kenneth J. Riemer and Earl P. Underwood , Jr. as class counsel (the "Class Rep" and the "Class Counsel" respectively).

5. Under the terms of this Settlement Agreement, class certification is appropriate because:

- (a) the Class is so numerous that joinder of all members is impracticable;
- (b) there are questions of law and fact common to the Class;
- (c) the claim of the Class Rep is typical of the claims of the Class; and,
- (d) the Class Rep will fairly and adequately protect the interest of the Class.

6. Pursuant to section 1692k of the FDCPA, the maximum statutory damages recoverable by the Class against CardWorks would be the lesser of 1% of CardWorks' net worth or \$500,000. Here, CardWorks' counsel has represented that 1%

of CardWorks' net worth as of the relevant date is approximately \$109,000. Moreover, CardWorks has represented that there are approximately 18,500 potential members of the Class.

7. CardWorks represents that it is not aware of any other lawsuits pending against it concerning the collection letter/action at issue here.

Settlement Payment

8. In consideration of the full and complete settlement, release and discharge of all claims of the Class Rep and the Class against CardWorks, and subject to the provisions of this Settlement Agreement and all applicable orders of the District Court, CardWorks agrees to pay up to, and in no case more than, \$100,000 as described below:

(i) \$3,000 to Class Rep Sussi Dalton;

(ii) \$35,000 to Class Counsel; and

(iii) up to, but in no case more than, \$62,000, inclusive of fees

associated with notice to the Class and distribution of settlement funds to the Class (the "Class Funds"), to be divided, after the deduction of said fees and costs, pro-rata among the Class as described within Paragraph 10 herein.

Timing of Settlement Payments

9. Upon preliminary approval of this Settlement Agreement, CardWorks shall, within fourteen (14) days after the last day on which any appeal or objection to such approval may be filed, make payment to Tilghman & Co., Inc. (the "Claims Administrator"), from the Class Funds, for all costs associated with providing notice of this Settlement to the Class.

10. Within thirty (30) days after the final approval of this Settlement Agreement, CardWorks shall (i) make payment to the Claims Administrator, from the Class Funds, of all costs associated with the administration of claims and distribution of settlement funds to the Class; (ii) make payment to the Claims Administrator, from the Class Funds, in the amount of the lesser of the remainder of the Class Funds or a sum representing \$10.00 for each Class member who has submitted a Claim Form (annexed hereto as Exhibit B) to the Claims Administrator on or before fifteen (15) days prior to the hearing before the Court on the final approval of this Settlement Agreement; and (iii) make payment to Class Counsel in the amount of \$38,000, representing the \$3,000 payment due the Class Rep and \$35,000 representing attorneys' fees and costs associated with this litigation.

11. If an objection to the Settlement is filed by any Class member, or any other person or entity, the payment set forth within Paragraph 9 herein shall not be made until 14 days after the final denial of any such objection.

Claims Administration

12. The Claims Administrator shall send out the class notice annexed here to as Exhibit C (the "Class Notice") to each member of the Class within 14 days of the last day on which any objection or appeal of preliminary approval of this Settlement Agreement by the Court may be filed, or, if any objection or appeal is filed, within 14 days of final denial of such objection or appeal. In addition to advising of the proposed settlement and the opportunity to object, the Class Notice shall include language advising Class members that they have a right to object to the Settlement or opt out of the Settlement.

13. Counsel for CardWorks shall provide to the Claims Administrator the names and addresses of each Class member reasonably available or accessible to CardWorks (the "Information"). The Information shall not be provided until the Claims Administrator acknowledges in writing that the Information is confidential and shall not be provided to any person or entity, including but not limited to the Class Rep or Class Counsel. Upon completing its duties, the Claims Administrator shall return all copies of the Information to CardWorks.

Covenant of Non-Solicitation

14. Class Counsel agrees that for a period of two (2) years following the date of this Settlement Agreement, it will not solicit, directly or indirectly, and shall not refer to any other person, business from any Class member who has opted-out of this Settlement Agreement which is related in any way to the facts alleged in this litigation.

15. CardWorks, pursuant to 28 U.S.C. § 1715 of the Class Action Fairness Act, shall notify the appropriate Federal and State regulatory authorities of this proposed Settlement within 10 days of the filing of the motion to approve this Settlement Agreement and shall file with the Court notification of CardWorks' compliance with 28 U.S.C. § 1715(b).

16. The Settlement set forth herein shall not become effective unless the Court finally approves the Settlement Agreement, without material alteration, as fair, reasonable, and adequate. In the event that the Court does not approve this Settlement Agreement, this entire Settlement Agreement shall become null and void. In the event that this Settlement Agreement shall become null and void for any reason, the provisions of Rule 408 of the Federal Rules of Evidence will apply. No admission of

law, fact, or combination of law and fact will be found to exist as a result of this Settlement Agreement, and no part of this Settlement Agreement will be admissible in any litigation.

17. Promptly after execution hereof, the parties shall jointly submit this Settlement Agreement to the Court and move for an order: (a) preliminarily finding this Settlement Agreement fair to all members of the Class; and, (b) approving the Class Notice.

Release

18. Class Rep and each member of the Class, and each of them, hereby release and forever discharge CardWorks, its past or present parents, affiliates, subsidiaries, successors, predecessors and assigns, and its present or former directors, officers, employees, partners, members, principals, employees, agents, insurers and attorneys, (collectively the "Released Parties" and individually a "Released Party") of and from all causes of action, suits, claims and demands, whatsoever, in law or in equity, known or unknown at this time, which Class Rep and any member of the Class now have, ever had, or hereafter may have against any Released Party arising out of or relating to the claims that were asserted or alleged or which could have been asserted or alleged in the Complaint or arising out of CardWorks' alleged violations of the FDCPA. CardWorks hereby agrees that it shall be barred from pursuing any claims for relief under 15 U.S.C. § 1692k(a)(3), 28 U.S.C. § 1927, or F.R.C.P. Rule 11, against Class Rep, Class Counsel or against any member of the Class arising out of CardWorks' alleged violations of the FDCPA asserted or alleged or which could have been asserted or alleged in the Complaint. The underlying debts which CardWorks was

attempting to collect via the collection letter at issue are in no way affected by this Settlement Agreement and nothing herein shall prevent CardWorks from continuing to attempt to collect the debts owed by the Class Rep or any member of the Class. Except as provided in section 8(ii), supra, of this Settlement Agreement, Class Rep, the Class and Class Counsel hereby waive, discharge and release the Released Parties from any and all claims for attorney's fees by lien or otherwise for legal services rendered by Class Counsel in connection with this litigation.

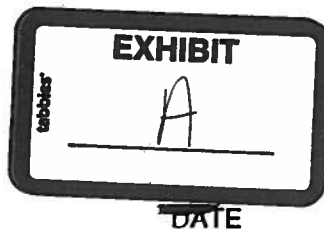
19. The Court shall retain jurisdiction over the Settlement and this Settlement Agreement.

20. The parties agree that this Settlement Agreement is the product of negotiation between the parties through their respective counsel and that no party shall be deemed to have drafted this Settlement Agreement.

21. This Settlement Agreement shall be interpreted in accordance with the laws of the State of Alabama for all state law issues, and in accordance with Federal law for all other issues.

22. This Settlement Agreement shall become effective upon execution, which may be done in counterparts, and final approval of the Court. Photocopies or facsimiles of executed copies of this Settlement Agreement may be treated as originals.

<p>UNDERWOOD & RIEMER, PC</p> <p>By: _____</p> <p>Earl P. Underwood, Jr. 21 South Section Street Fairhope, Alabama 36533 (251) 990-5558</p> <p><i>Attorneys for Plaintiff</i></p>	<p>HELMSING, LEACH, HERLONG, NEMAN & ROUSE</p> <p>By: _____</p> <p>James B. Newman Post Office Box 2767 Mobile, Alabama 36652 (251) 432-5521</p> <p><i>Attorneys for Defendants</i></p>
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CARDWORKS SERVICING
P.O. BOX 9201
OLD BETHPAGE, NY 11804

NAME
ADDRESS 1
CITY, STATE ZIP

Account number: XXXXXXXXXXXXXXXX
Re: NAME
Balance Due: \$XXX.XX
Creditor: CREDITOR NAME

Dear CUSTOMER:

Please be advised that your above referenced account, is being handled by this office and is in default.

By contacting us within five (5) days of the date of this letter, payment arrangements on your account can be made. Please contact our office today, toll free, at 1-877-487-5583 to avoid additional collection efforts. The hours of operation are Monday-Wednesday and Friday 8:00 am to 9:00 pm EST, Thursday 12:30pm to 9:00 pm EST, and Saturday 8:00 am to 4:30 pm EST.

If you have any questions, please contact us at 1-877-487-5583.

Sincerely,
CardWorks Servicing

IMPORTANT NOTIFICATION REQUIRED BY FEDERAL LAW

This is an attempt to collect a debt. Any information obtained will be used for that purpose. This communication is from a debt collector. Unless you notify this office in writing within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, this office will: (i) Obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. (ii) Provide you with the name and address of the original creditor, if different from the current creditor.

IMPORTANT NOTIFICATION REQUIRED BY FEDERAL LAW

FEDERAL VALIDATION NOTICE:

PURSUANT TO U.S.C/1692G/(a). TAKE NOTICE THAT:

1. THE AMOUNT OF THE CLAIMED DEBT IS THE AMOUNT STATED IN THE LETTER ON THE REVERSE SIDE OF THIS NOTICE.
2. THE NAME OF THE CREDITOR TO WHOM IS OWED IS IN THE LETTER ON THE REVERSE SIDE OF THIS NOTICE.
3. UNLESS YOU DISPUTE THE VALIDITY OF THE ABOVE DEBT, OR ANY PORTION THEREOF, WITHIN THIRTY (30) DAYS AFTER YOUR RECEIPT OF THIS NOTICE, THE DEBT WILL BE ASSUMED TO BE VALID BY US.
4. IF YOU NOTIFY OUR OFFICE BELOW IN WRITING WITHIN THIRTY (30) DAYS OF YOUR RECEIPT OF THIS NOTICE THAT THE DEBT, OR ANY PORTION THEREOF IS DISPUTED, WE WILL OBTAIN VERIFICATION OF THE DEBT OR A COPY OF ANY JUDGEMENT TO YOU.
5. UPON YOUR WRITTEN REQUEST TO THE OFFICE BELOW WITHIN THIRTY (30) DAYS OF YOUR RECEIPT OF THIS NOTICE, WE WILL PROVIDE YOU WITH THE NAME AND THE ADDRESS OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM THE CURRENT CREDITOR LISTED IN THE LETTER ON THE REVERSE SIDE OF THIS NOTICE.

TENNESSEE RESIDENTS:

THIS COLLECTION AGENCY IS LICENSED BY THE COLLECTION SERVICE BOARD OF THE DEPARTMENT OF COMMERCE AND INSURANCE.

COLORADO RESIDENTS:

FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.AGO.STATE.CO.US/CADC/CADCMAIN.CFM. A CONSUMER HAS THE RIGHT TO REQUEST IN WRITING THAT A DEBT COLLECTOR OR COLLECTION AGENCY CEASE FURTHER COMMUNICATION WITH THE CONSUMER. A WRITTEN REQUEST TO CEASE COMMUNICATION WILL NOT PROHIBIT THE DEBT COLLECTOR OR COLLECTION AGENCY FROM TAKING ANY OTHER ACTION AUTHORIZED BY LAW TO COLLECT THE DEBT.

NEW YORK STATE RESIDENTS:

NEW YORK CITY DEPARTMENT OF CONSUMERS AFFAIRS LICENSE NUMBER: 1184611

WISCONSIN RESIDENTS:

THIS COLLECTION AGENCY IS LICENSED BY THE OFFICE OF THE ADMINISTRATOR OF THE DIVISION OF BANKING, P.O. BOX 7876, MADISON, WISCONSIN 53707.

NORTH CAROLINA RESIDENTS:

NORTH CAROLINA DEPARTMENT OF INSURANCE PERMIT NUMBER: 4390

MINNESOTA RESIDENTS:

THIS COLLECTION AGENCY IS LICENSED BY THE MINNESOTA DEPARTMENT OF COMMERCE.

CALIFORNIA RESIDENTS:

1. THE STATE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT AND THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT REQUIRE THAT, EXCEPT UNDER UNUSUAL CIRCUMSTANCES, COLLECTORS MAY NOT CONTACT YOU BEFORE 8 AM OR AFTER 9 PM. THEY MAY NOT HARASS YOU BY USING THREATS OF VIOLENCE OR ARREST OR BY USING OBSCENE LANGUAGE. COLLECTORS MAY NOT USE FALSE OR MISLEADING STATEMENTS OR CALL AT WORK IF THEY KNOW OR HAVE REASON TO KNOW THAT YOU MAY NOT RECEIVE PERSONAL CALLS AT WORK. FOR THE MOST PART, COLLECTORS MAY NOT TELL ANOTHER PERSON TO CONFIRM YOUR LOCATION OR ENFORCE A JUDGEMENT. FOR MORE INFORMATION ABOUT DEBT COLLECTION ACTIVITIES, YOU MAY CONTACT THE FEDERAL TRADE COMMISSION AT 1-877-FTC-HELP OR WWW.FTC.GOV.

2. AS REQUIRED BY LAW, YOU ARE HEREBY NOTIFIED THAT A NEGATIVE CREDIT REPORT REFLECTING ON YOUR CREDIT RECORD MAY BE SUBMITTED TO A CREDIT REPORTING AGENCY IF YOU FAIL TO FULFILL THE TERMS OF YOUR CURRENT OBLIGATIONS.

UTAH RESIDENTS:

AS REQUIRED BY UTAH LAW, YOU ARE HEREBY NOTIFIED THAT A NEGATIVE CREDIT REPORT REFLECTING ON YOUR CREDIT RECORD MAY BE SUBMITTED TO A CREDIT REPORTING AGENCY IF YOU FAIL TO FULFILL THE TERMS OF YOUR CREDIT OBLIGATIONS.

MASSACHUSETTS RESIDENTS:

YOU HAVE THE RIGHT TO MAKE A WRITTEN OR ORAL REQUEST THAT TELEPHONE CALLS REGARDING YOUR DEBT NOT BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT. ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN (10) DAYS UNLESS YOU PROVIDE WRITTEN COMMUNICATION OF THE REQUEST POSTMARKED OR DELIVERED WITHIN SEVEN (7) DAYS OF SUCH REQUEST. YOU MAY TERMINATE THIS REQUEST BY WRITING TO THE DEBT COLLECTOR AT P.O. BOX 9201, OLD BETHPAGE, NY 11804-9001. IF YOU WISH TO DISCUSS THIS MATTER, PLEASE CALL US DIRECT AT 1-877-487-5583 DURING THE HOURS REFERENCED BELOW.

HOURS OF OPERATION:

MONDAY-WEDNESDAY AND FRIDAY 8:00AM TO 9:00PM EST
THURSDAY 12:30PM TO 9:00PM EST
SATURDAY 8:00AM TO 4:30PM EST
PHONE NUMBER 1-877-487-5583

**CLAIM FORM**

YOU SHOULD SUBMIT THIS FORM BECAUSE YOU ARE ENTITLED TO MONETARY RELIEF UNDER THE SETTLEMENT AGREEMENT.

Your Claim Form must be received by the Settlement Administrator by _____ in order for you to be eligible for a payment. The Settlement Administrator shall be the sole arbiter of whether your claim was timely received.

NAME OF CLAIMANT: _____

ADDRESS: _____

(this is the address to which any check will be sent)

SOCIAL SEC. # OF CLAIMANT: _____

TELEPHONE NO.: _____

Mail this form, plus any attachments, to: CardWorks Settlement Administrator, P.O. Box _____, Birmingham, Alabama _____. [post office box to be provided by Settlement Administrator.]

BY SIGNING AND SUBMITTING THIS FORM, YOU (1) CERTIFY SUBJECT TO CRIMINAL PENALTIES PROVIDED BY STATE AND FEDERAL LAW THAT YOU HAVE REVIEWED AND UNDERSTAND THE CLASS NOTICE AND THIS CLAIM FORM AND THAT YOU, OR THE PERSON ON WHOSE BEHALF YOU SUBMIT A CLAIM, SATISFY ALL REQUIREMENTS TO RECEIVE MONETARY RELIEF, (2) ARE AUTHORIZING CARDWORKS, THE SETTLEMENT ADMINISTRATOR, AND/OR THE ATTORNEYS FOR THE PARTIES TO THIS CASE TO SEEK AND RECEIVE INFORMATION ABOUT YOU FROM ANY SOURCE FOR THE PURPOSES OF DETERMINING WHO IS OR MAY BE ELIGIBLE TO RECEIVE MONETARY RELIEF UNDER THE SETTLEMENT AGREEMENT.

I, _____, verify under penalty of perjury under the laws of the State of Alabama and the United States of America that the documentation and/or information I am providing herewith is true and correct to the best of my knowledge.

(Signature)

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Definition of the Class

All persons in the United States who, from August 28th 2008 through August 28st 2009, were sent a form collection letter that contained the following statement, “*Unless you notify this office in writing within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid.*” by, or on behalf of CardWorks Servicing, LLC (“CardWorks”). Excluded from the Class are those persons who: (1) currently are in bankruptcy; (3) individuals who already have settled a lawsuit, claim, or obtained a judgment against CardWorks arising from any collection activity engaged in by CardWorks; (3) CardWorks, the officers, directors, and shareholders of CardWorks, or any affiliate of CardWorks, members of each of their immediate families and each of their legal representatives, heirs, successors or assigns; (4) any government entity; (5) all judicial officers in the United States and their relatives within the third degree of kinship; and (6) any entity in which CardWorks has or had a controlling interest.

IF YOU FALL WITHIN THE CLASS OF PERSONS TO WHOM THIS NOTICE IS DIRECTED (“CLASS MEMBERS”), READ THIS NOTICE CAREFULLY. YOUR RIGHTS WILL BE AFFECTED BY THE PROPOSED SETTLEMENT. A proposed settlement has been reached regarding claims against CardWorks. This Lawsuit involves allegations that CardWorks sent a form collection letter that violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* If the proposed settlement is approved by the Court, persons within the class of persons to whom this notice is directed will be barred from filing any lawsuit related to the letters at issue. This notice briefly summarizes the claims and status of the suit and the terms of the proposed settlement. This notice also describes what you can do to object to the proposed settlement if you choose to object.

Nature of the Action

A lawsuit entitled *Sussi Dalton v. CardWorks Servicing, LLC*, CASE No. 09-CV-563 has been filed and is now pending in the United States District Court for the Southern District of Alabama, (the “Court”). The suit alleges that CardWorks’ form letter to the Class did not properly advise Class members of their right to dispute a debt, in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*

Class Claims and Issues

The Court has ruled that the Lawsuit shall be maintained as a class action brought by the named Plaintiff, for herself and on behalf of the Class Members, seeking monetary relief, attorney’s fees, and costs. The Court further has ruled that Earl P. Underwood, Jr., Kenneth J. Riemer and James D. Patterson, all of the firm Underwood & Riemer, PC. (hereinafter referred to as “Class Counsel”) are competent and capable of representing the interests of the class and are designated as counsel for the Class.

The approval by the Court of the Lawsuit as a class action does not mean that the named Plaintiff, or any of the Class Members, are entitled to recover the requested relief, nor does it mean that the named Plaintiff would be successful in this litigation. The ruling simply means that the ultimate outcome of this lawsuit will apply not only to the named Plaintiff but also to all Class Members and each will be bound by the outcome of this class action, unless the proposed settlement, for whatever reason, does not become final.

Proposed Settlement

The named Plaintiff, individually and on behalf of the Class members, and CardWorks have entered into and filed with the Court a proposed Stipulation of Settlement ("Settlement Agreement"). Under the terms of the Settlement Agreement, CardWorks denies any liability or any wrongdoing of any kind whatsoever and specifically denies each substantive allegation in the Lawsuit and asserts that its actions have been consistent with, and in compliance with, all applicable state and federal laws at all times relevant to this lawsuit. Nevertheless, to avoid further expense, burdensome and protracted litigation, and to forever put to rest all claims of the named Plaintiff or any Class member for all claims arising out of the use of the relevant form collection letter, CardWorks agrees to the following settlement terms:

- (a) CardWorks will discontinue the use of the collection letter made the basis of this action; and
- (b) CardWorks has agreed to pay a total settlement of up to \$100,000. Class members who timely file claims will be entitled to a payment, in an amount not to exceed \$10.00 per individual, from the settlement fund. The amount that you receive, if you send in timely a claim form, will be determined by the number of people who submit valid claims, but will not be more than \$10.00. The Parties have estimated that there are 18,500 class members. The amount you receive may be reduced if the cost of paying \$10.00 to everyone who submits a timely claim form is greater than the remainder of the settlement funds, after the payment of fees and the costs of administration of this settlement.

Attorney Fees and Class Representative Payment

CardWorks will pay Class Counsel \$35,000 in attorneys' fees, costs and expenses and will pay \$3,000 to the named class representative, Sussi Dalton. Such payments are expressly conditioned upon approval by the Court.

Administration of Settlement

The settlement will be administered by a third-party administrator ("Settlement Administrator"). All calculations of this amount due to any individual Class member will be performed by the Settlement Administrator. This amount will then be distributed by checks made payable to individual Class members, and sent to the address listed on the returned Claim Form. The Settlement Administrator will have complete discretion to determine whether a particular Claim Form meets the requirements listed in the Stipulation of Settlement, including but not limited to whether such Claim Forms are signed, whether the claim form was timely received and, if the

settlement fund is prorated, the amount due. The Settlement Administrator's decision on such matters shall be final.

Claim Form

UNDER THE SETTLEMENT AGREEMENT YOU WILL NOT RECEIVE ANY PAYMENT UNLESS THE CLAIM FORM IS COMPLETED AND RECEIVED BY THE SETTLEMENT ADMINISTRATOR NO LATER THAN _____.

The Settlement Administrator shall be the sole judge of whether your claim was timely received. If you are a Class member, but you fail to follow these requirements, then you will not be entitled to recover any monetary relief although you will remain a member of the Class and be bound by the settlement.

Any checks received as a result of your filing a claim in this case not cashed within 180 days from the distribution date will be void.

PLEASE BE WARNED:

- **By submitting the enclosed Claim Form, and claiming that you (or the person on whose behalf you submit the Claim Form) is eligible to receive monetary relief under the Settlement Agreement, you are representing that you or the person you represent meet all requirements necessary to receive such monetary relief.**

If you are submitting a Claim Form on behalf of another person in a representative capacity, the Claim Form must be accompanied by a certified copy of your power of attorney, letters of administration, conservatorship, or other legal authorization to act as the representative of such other person.

Release of Claims and Binding Effect of Class Judgment

Under the proposed settlement, all Class members who do not opt out of the settlement will be bound by any judgment entered by the Court. CardWorks, its past or present parents, affiliates, subsidiaries, successors, predecessors and assigns, and its present or former directors, officers, employees, partners, members, principals, employees, agents, insurers and attorneys will be forever released from any and all claims, actions, liens, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever, known or unknown, of any kind or nature whatsoever, direct or consequential, foreseen or unforeseen, developed or undeveloped arising under, or related to the form collection letter or authorized by federal or state statutory, regularly, or common law including, but not limited to, those arising under the Fair Debt Collection Practices Act, and/or common law theories of fraud, suppression, misrepresentation, deceit, and/or deceptive practices, which have been asserted, or could have been asserted in this Action, all as provided for in the Settlement Agreement, and Class members will be forever barred from seeking further relief on any of these claims. Upon Court approval of the settlement, a judgment shall be

entered dismissing with prejudice and fully and finally settling this suit as to all Class members.

If you fail to return the Claim Form or to otherwise claim any settlement benefit provided for in the Settlement Agreement, you will still be bound by the releases under the Settlement Agreement.

How to Exclude Yourself From the Class

If you wish to exclude yourself from this Class (and receive no benefits and not be bound by the release and judgment), send a notice to the Settlement Administrator at _____ **[post office box to be provided by the Settlement Administrator]** no later than _____. No special form is required. However, the form must identify that you are a member of the class in *Sussi Dalton v. CardWorks Servicing, LLC* CASE No. 09-CV-563 that you wish to exclude yourself from the settlement (opt-out), and be signed by you.

How to Object To The Settlement

On _____ at _____ a.m., the Honorable William E. Cassady, Judge for the United States District Court for the Southern District of Alabama, will conduct a hearing on whether the proposed settlement should be approved as fair, reasonable and adequate and on the determination of the amount of attorneys' fees to be awarded. The hearing will be conducted at the courthouse of the United States District Court for the Southern District of Alabama, 113 St. Joseph Street, Mobile, Alabama 36602. The hearing may be adjourned from time to time by the Court without further notice to you, other than the official record in this action. If you are a member of the Class you have the right to ask the Court that the proposed class not be certified or that the proposed settlement not be approved if you think it is unfair, inadequate, unreasonable or improper in any way. You have the right to file any objections you might have to any aspect of the proposed settlement. If you wish to exercise your right to object, you must mail a written statement of your objections, along with a statement as to whether you wish to appear at the Settlement Hearing, either in person or through your counsel to:

Honorable Charles R. Diard, Jr.
United States District Court for the Southern District of Alabama
113 St. Joseph Street
Mobile, Alabama 36602

Your written objections to the settlement and/or notice of your intent to appear at the hearing must be filed with the Clerk of the Court no later than Friday_____. You must also mail a copy of your written statement of objections and intention to appear to:

CLASS COUNSEL:

Earl P. Underwood, Jr.
UNDERWOOD & RIEMER, PC
21 South Section Street
Fairhope, Alabama 36533
(251) 990-5558

COUNSEL FOR DEFENDANT:

James B. Newman
HELMSING, LEACH, HERLONG, NEWMAN & ROUSE
Post Office Box 2767
Mobile, Alabama 36652
(251) 432-5521

You may (but are not required to) appear at the hearing, in person or through an attorney retained at your own expense, to support the proposed settlement, object to it, or ask questions about it. **DO NOT CALL THE COURT.** Any written objections to the settlement will be considered by the Court and there is no requirement that any objector appear personally at the hearing.

You do not have to come to the hearing to receive the benefits of settlement, but you must return the Claim Form if you are entitled to restitution under the Settlement Agreement (and you wish to receive such restitution). If the Court approves this settlement, the date of mailing of checks will be the fifth business day after the occurrence of all of the following: The entry of final judgment in this suit and dismissal of all claims with prejudice; the final award of attorneys fees, costs, and payment to the class representative; the expiration of any possibility of appeal of the Court's Judgment approving this settlement and awarding attorneys fees, and costs; and the Settlement Administrator's certification to Defendant of any Class members' eligibility for monetary relief. If the settlement is not approved, this suit will proceed and the settlement will be null and void.

Examination Of Papers

This notice is a summary of the settlement and therefore does not include every detail of the settlement. You may inspect the complete Settlement Agreement, the complaint and all other pleadings filed in this suit during the hours of 8:30 a.m. to 4:30 p.m., Monday through Friday, at the office of the Clerk of the United States District Court for the Southern District of Alabama.

DATED this ____ day of _____, 2010.

WILLIAM E. CASSADY
UNITED STATES MAGISTRATE JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SUSSI DALTON, individually and)	
on behalf of all similarly situated)	
individuals	)	CIVIL ACTION 09-00563-CB-C
Plaintiff,)	
)	
v.)	
)	
CARDWORKS SERVICING, LLC)	
)	
Defendant.)	

PRELIMINARY APPROVAL ORDER

WHEREAS, the Court has been advised that the parties to this actions, through their counsel, have agreed, subject to Court approval following notice to the Class and a hearing, to settle this action upon the terms and conditions set forth in the Stipulation of Settlement ("Settlement Agreement"), dated as of _____, 2010, which has been submitted to the Court;

NOW, THEREFORE, based upon the Settlement Agreement and all of the files, records, and proceedings herein, and it appearing to the Court that upon preliminary examination the Settlement Agreement appears fair, reasonable, and adequate, and that a hearing should be held after notice to the Class of the proposed settlement to determine if the Settlement Agreement and settlement are fair, reasonable, and adequate and if a Settlement Approval Order and Final Judgment should be entered in this action based upon the Settlement Agreement.

IT IS HEREBY ORDERED THAT:

1. This Settlement Agreement and the settlement contained therein are preliminary approved as fair, reasonable, and adequate.

2. The Court approves Steve Tilghman as the Administrator of the Settlement. As soon as practicable, but not later than _____, CardWorks Servicing, LLC (“CardWorks”) shall provide the Notice of the Proposed Settlement (“Class Notice”) to the Class as set forth in the Settlement Agreement.

3. The costs and expenses of preparing and sending the Class Notice shall be initially paid pursuant to the terms of the Settlement Agreement.

4. A hearing (the “Final Hearing”) shall be held on _____ at _____ a.m., as set forth in the Class Notice, to determine whether the proposed settlement of this action is fair, reasonable, and adequate and should be approved. Class Counsel’s briefs and supporting papers in support of the proposed settlement shall be filed with the Court no later than _____. Any materials the parties wish to submit relating to the proposed settlement likewise should be submitted by _____. The Final Hearing described in this paragraph may be postponed, adjourned, or continued by order of the Court without further notice to the Class, other than the official record in this case. After the Final Hearing, the Court may enter a Settlement Approval Order and Final Judgment in accordance with the Settlement Agreement that will adjudicate the right of all Class members.

5. Any member of the Class who objects to approval of the proposed settlement may appear at the Final Hearing in person or through counsel to show cause why the proposed settlement should not be approved as fair, reasonable, and adequate. Attendance is not required and all timely objections will be fully considered.

6. Objections to the settlement shall be heard, and any papers or briefs submitted in support of said objections shall be considered by the Court only if filed no later than _____ said objection(s) shall file with the Clerk of the United States District

Court for the Southern District of Alabama, written notice of their intention to object, together with supporting papers stating specifically the factual basis and legal grounds of the objection, and shall serve copies thereof together with proof of service on or before said date upon each of the following counsel:

CLASS COUNSEL:

Earl P. Underwood, Jr.
UNDERWOOD & RIEMER, PC
21 South Section Street
Fairhope, Alabama 36533
(251) 990-5558

COUNSEL FOR DEFENDANT:

James B. Newman
HELMSING, LEACH, HERLONG, NEWMAN & ROUSE
Post Office Box 2767
Mobile, Alabama 36652
(251) 432-5521

The objection must state the name and number of this action. No Class member shall be entitled to be heard and no objection shall be considered unless these requirements are satisfied.

7. Any Class member who does not make his objection to the settlement in the manner provided herein shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

8. The automated Class Notice as directed in this Order and/or in the Settlement Agreement constitutes the best and most efficient notice practicable under the circumstances and sufficient notice to all potential members of the Class. All Class members, whether they receive the Class Notice or not, shall be bound by the judgment.

9. All discovery and other pretrial proceedings in this action are stayed and suspended until further order of this Court, except such action as may be necessary to implement the Settlement Agreement and this Order.

10. In the event that the proposed settlement as provided in the Settlement Agreement (in its present form) is not approved by the Court (or such settlement is reversed by any Court or appeal), or for any reason the parties fail to obtain a Settlement Approval Order and Final Judgment as contemplated in the Settlement Agreement, or the Settlement Agreement is terminated pursuant to its terms, then the Settlement Agreement and all orders entered in connection therewith (including but not limited to the order certifying a class) shall become null and void and of no further force and effect, and shall not be used or referred to for any purposes whatsoever. In such event, the Settlement Agreement and all negotiations and proceedings relating thereto shall be withdrawn without prejudice as to the rights of any and all parties thereto, who shall be restored to their respective position as of the date of the execution of the Settlement Agreement. Further, all such orders, negotiations, discussions, drafts and any reference to the Settlement Agreement shall not be admissible into evidence in this or any other action.

11. Dates for performance:

- (a) All Class members to be provided notice of the proposed settlement, as provided in the Settlement Agreement, no later than _____.
- (b) Objection to settlement to be filed no later than _____.
- (c) Final Approval Hearing to be held on _____ at _____ a.m.
- (d) Claim Forms from Class members to be received by the Claims Administrator no later than _____

DATED this _____ day of _____, 2010

WILLIAM E. CASSADY
UNITED STATES MAGISTRATE JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SUSSI DALTON, individually and
on behalf of all similarly situated
individuals

:

Plaintiff,

:

vs.

:

CA 09-00563-CB-C

CARDWORKS SERVICING, LLC,

:

Defendant.

:

REPORT AND RECOMMENDATION

This matter is before the undersigned, pursuant to 28 U.S.C. § 636(b)(1)(B), on the parties' Joint Motion for Preliminary Approval of Class Settlement Agreement (Doc. 16), filed August 4, 2010 (the "Initial Joint Motion"); the Declaration of Earl P. Underwood, Jr. in Support of Plaintiff's Motion for Preliminary Approval (Doc. 19), filed August 30, 2010; Plaintiff's Brief in Support of Preliminary Approval of Class Settlement (Doc. 21), filed September 6, 2010; and the parties' Joint Motion for Preliminary Approval of Class Settlement (Doc. 27), filed November 11, 2010 (the "Second Joint Motion"). After consideration of the two motions filed and the evidence submitted by the parties, it is the undersigned's **RECOMMENDATION** that the Second Joint Motion be **GRANTED**, the Initial Joint Motion be deemed **MOOT**, and that the Court **ADOPT** the further recommendations of the undersigned, set forth in the conclusion of this Report and Recommendation, regarding dissemination of Class Notice and other procedures necessary

before a Fairness Hearing can be conducted in this matter.

Factual and Procedural Background

Plaintiff Susi Dalton filed a Complaint (Doc. 1) on August 28, 2009 alleging that Defendant CardWorks sent her a debt collection letter that violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (“FDCPA”). Plaintiff specifically alleges that the language in the letter requiring her to “notify [debt collector] in writing within 30 days after receiving this notice [to] dispute the validity of [the] debt” is “inaccurate and misleading” and violates 15 U.S.C. § 1692g(a), which provides that a consumer can within 30 days after receipt of a debt collectors notice dispute the validity of a debt, but sets no requirements as to the manner in which a consumer must communicate (*i.e.*, communications must be in writing) (*see* 15 U.S.C. § 1692g(a)(3)). (Doc. 1, ¶¶ 8-14.) Plaintiff further alleges that she brought “this action on behalf of himself [sic] and all members of the class composed of persons who have been [or] were subjected to collection activity by [CardWorks] that was in violation of the FDCPA of the type(s) in this transaction and who are entitled to some or all of the relief requested herein.” (Doc. 1, ¶ 18 (pp. 4-5).) CardWorks answered the Complaint on October 7, 2009 (Doc. 10), denying both Plaintiff’s factual allegations and that the case is appropriate for class action treatment, and asserting the affirmative defenses of failure to state a claim and bona fide error under 15 U.S.C. § 1692k(c).

On August 4, 2010, the parties filed their Initial Joint Motion (Doc. 16) requesting that the Court certify a class and preliminarily approve class settlement. Because the parties’ Initial Joint Motion alone did not provide the Court with sufficient evidence to make a

preliminary evaluation, the undersigned, on August 13, 2010, ordered the parties to supplement the evidentiary record before the Court. (*See* Doc. 17.) The Initial Joint Motion requested that an “opt-in” class be certified under Rule 23, which the undersigned believes is in violation of that rule. (*See* Doc. 22, Order, pp. 3-4 (“To the extent the Settlement Agreement contemplates an ‘opt-in’ class (as opposed to an ‘opt-out’ class); it is my view that such a class cannot be certified under Rule 23.”) (citing cases).) Rather than recommend that the Court deny the Initial Joint Motion, the undersigned held a hearing with the parties on October 12, 2010 to allow them to explain the propriety of employing an “opt-in” class here or, if the parties were amenable to using an “opt-out” class with a claims made mechanism, how that change would, if at all, affect the proposed settlement. (*See* Docs. 22 & 23.)

At that hearing, the parties were not receptive to altering their settlement to include an “opt-out” class, and the undersigned issued an order on October 15, 2010 (Doc. 24) laying out various reasons why an “opt-in” class cannot be certified consistent with the requirements of Rule 23, including the fact that the parties’ “opt-in” approach would fail to bind all class members who failed to submit a claim, which would likely result in thousands of potential claims going unresolved, potentially leading to myriad new class actions arising from this defendant’s same conduct. *See Donovan v. Univ. of Tex. at El Paso*, 643 F.2d 1201, 1206-07 (5th Cir. 1981) (“It is undisputed that the purpose of Rule 23 is to prevent piecemeal litigation to avoid: (i) a multiplicity of suits on common claims resulting in inconsistent adjudications; and (ii) the difficulties in determining res judicata effects of a judgment.”); *In*

re Ski Train Fire in Kaprun, Austria on Nov. 11, 2000, 220 F.R.D. 195, 209 (S.D.N.Y. 2003), reversed by *Estate of Kern v. Siemens Corp.*, 393 F.3d 120, 124 (2nd Cir. 2004) (“It is axiomatic that the purpose of a class action is to resolve finally the claims of all members of a class so that future litigation need not occur.”). The undersigned then gave the parties another opportunity to present this Court with a revised settlement agreement that included an “opt-out” class. (See Doc. 24.) On October 28, 2010, Plaintiff filed an unopposed motion for additional time to file a revised settlement pursuant to the undersigned’s October 14, 2010 Order, in which they informed the Court that “[t]he parties have conferred and have agreed to propose an ‘opt-out’ settlement.” (Doc. 25.) That revised proposed Settlement Agreement is annexed to the Second Joint Motion now before the Court.

Discussion

“Judicial review of a proposed class action settlement is a two-step process: preliminary approval and a subsequent fairness hearing.” *Smith v. Wm. Wrigley Jr. Co.*, No. 09-60646-CIV, 2010 WL 2401149, at *1 (S.D. Fla. June 15, 2010) (citations omitted). The Court’s initial task is to make a “preliminary evaluation of the fairness of the settlement before directing that notice be given to the settlement class.” *Id.*; see also *Bennet v. Behrman Corp.*, 737 F.2d 982, 986 (11th Cir. 1984) (listing the factors courts in the Eleventh Circuit consider). Our preliminary evaluation here necessarily includes determining whether a class can and should be certified, consistent with the requirements of Rule 23. See *Outten v. Capital Mgmt. Servs., L.P.*, No. 09-22152-CIV, 2010 WL 2194442, at *1-*5 (S.D. Fla. Apr. 9, 2010) (addressing Rule 23 requirements for a settlement class in a case arising out of

alleged violations of the FDCPA); MANUAL FOR COMPLEX LITIGATION, FOURTH, § 21.632 (2004) (noting that where a case “is presented for both class certification and settlement approval, the certification hearing and preliminary fairness evaluation can usually be combined”).

“For a district court to certify a class action, the named plaintiffs must have standing, and the putative class must meet each of the requirements specified in Federal Rule of Civil Procedure 23(a), as well as at least one of the requirements set forth in Rule 23(b).” *Klay v. Humana, Inc.*, 382 F.3d 1241, 1250 (11th Cir. 2004). Rule 23(a) requires a putative class to meet four requirements: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. *See* FED. R. CIV. P. 23(a); *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1265 (11th Cir. 2009). When, as here, certification is sought pursuant to Rule 23(b)(3), a court must make two additional findings, specifically: “(1) that common questions of law or fact predominate over questions affecting only individual members (‘predominance’); and (2) that a class action is superior to other available methods for adjudicating the controversy (‘superiority’).” *Vega*, 564 F.3d at 1265. While a district court must not decide the merits of the case at the class certification stage, it “can and should consider the merits . . . to the degree necessary to determine whether the requirements of Rule 23 will be satisfied.” *Vega*, 564 F.3d at 1266 (citations omitted); *see also In re Polypropylene Carpet Antitrust Litig.*, 178 F.R.D. 603, 609 (N.D. Ga. 1997) (noting that the class certification stage is a hybrid of the motion to dismiss stage and the summary judgment stage, “in that the court looks beyond the pleadings but does not inquire into the merits of the case”) (citation omitted). Further, courts

may take into account a proposed settlement when deciding a motion to certify a class. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 619-20 (1997).

A. Class Definition and Standing

“Before analyzing the Rule 23(a) requirements, or as part of the numerosity inquiry, a court must determine whether the class definition is adequate.” *County of Monroe, Fla. v. Priceline.com, Inc.*, 265 F.R.D. 659, 666 (S.D. Fla. 2010) (citation and internal quotation marks omitted). “A class should be accurately defined; certification should be denied where the class definition is overly broad, amorphous, and vague, or where the number of individualized determinations required to determine class membership becomes too administratively difficult.” *Outten*, 2010 WL 2194442, at *2 (citation and internal quotation marks omitted). Here, the Settlement Class is defined as:

[A]ll persons in the United States who received from CardWorks the form collection letter [that Plaintiff received],¹ between August 28, 2008 and August 28, 2009.

(Doc. 27, Ex. 1 [proposed Settlement Agreement], p. 1.) Such a group is readily identifiable.

Thus, the Court turns to standing. The named Plaintiff has adequately demonstrated that she and the other members of the Putative Class have standing to seek relief in this case.

To have standing, a plaintiff must show (1) an “injury-in-fact,” (2) a causal connection between the alleged injury and defendant’s challenged action, and (3) that “the injury will be redressed by a favorable decision.” *Shotz v. Cates*, 256 F.3d 1077, 1081 (11th Cir. 2001)

¹ The collection letter (Doc. 27, pp. 14-15) is annexed as Exhibit A to this Report and Recommendation.

(citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). All members of the Putative Class meet all three prongs. They have allegedly received (1) a deceptive collection letter in violation of the FDCPA (*see* Doc. 21-1, Decl. of Sussi Dalton in Supp. of Joint Mot. for Prelim. Approval of Class Settlement, ¶¶ 2-4) sent by (2) Defendant (*see id.*), and (3) class members may receive relief through a judgment in this Court in their favor. Accordingly, Plaintiff and the Putative Class have standing to bring this case. *See Outten*, 2010 WL 2194442, at *2.

B. Rule 23(a) Requirements

1. **Numerosity**

Rule 23 requires a class to be “so numerous that joinder of all members is impracticable.” FED. R. CIV. P. 23(a)(1). The Eleventh Circuit has recognized that, as a general rule, a class of less than 21 members is inadequate, and a class of more than 40 members is adequate. *See Helms v. ConsumerInfo.com, Inc.*, 236 F.R.D. 561, 564 (N.D. Ala. 2005) (citing *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986)). Here, “[t]he parties estimate that the Class for which certification is sought contains over 18,000 potential members.” (Doc. 21, p. 3.) Obviously, joinder of that amount is impracticable, and, accordingly, the parties have demonstrated that the Putative Class is sufficiently numerous.

2. **Commonality**

Commonality requires that there be “questions of law or fact common to the class.” FED. R. CIV. P. 23(a)(2). This is a “relatively light burden” that “does not require that all the

questions of law and fact raised by the dispute be common’ . . . or that the common questions of law or fact ‘predominate’ over individualized issues.” *Vega*, 564 F.3d at 1268 (quoting *Cox*, 784 F.2d at 1557)). Rather, “[c]ommonality simply requires that there be at least one issue that affects all or a significant number of proposed class members.” *Camafel Bldg. Inspections, Inc. v. Bellsouth Advertising & Publishing Corp.*, Civil Action No. 1:06-CV-1501-JEC, 2008 WL 649778, at *8 (N.D. Ga. Mar. 7, 2008) (citation omitted). “Allegations of a common course of conduct by defendants affecting all class members will satisfy the commonality requirement.” *Outten*, 2010 WL 2194442, at *3 (citations omitted).

The seminal issue in this case is whether the language in CardWorks’s letter requiring the recipient to “notify [debt collector] in writing within 30 days after receiving this notice [to] dispute the validity of [the] debt” violates 15 U.S.C. § 1692g(a), which provides that a consumer can within 30 days after receipt of a debt collectors notice dispute the validity of a debt, but sets no requirements as to the manner in which a consumer must communicate (*i.e.*, communications must be in writing) (*see* 15 U.S.C. § 1692g(a)(3)). (*See* Doc. 1, ¶¶ 8-14.) Moreover, the letter sent to Plaintiff is a “form collection letter” (Doc. 16, Ex. 1, p. 1)—which by definition is standardized—making it “likely that [all] issues can be resolved without individualized factual or legal inquiries.” *Outten*, 2010 WL 2194442, at *3. Accordingly, the particulars of this case satisfy the commonality requirement.

3. **Typicality**

Rule 23(a)(3) requires that “the claims or defenses of the representative parties [be] typical of the claims or defenses of the class.” FED. R. CIV. P. 23(a)(3). “A class

representative must possess the same interest and suffer the same injury as the class members in order to be typical. . . . [T]ypicality measures whether a sufficient nexus exists between the claims of the named representatives and those of the class at large. Commonality and typicality are related, but [t]raditionally, commonality refers to the group characteristics of the class as a whole, while typicality refers to the individual characteristics of the named plaintiff in relation to the class.” *Outten*, 2010 WL 2194442, at *3 (quoting *Vega*, 564 F.3d at 1275) (internal quotations marks omitted). And like commonality, typicality is not a demanding test. *See City of St. Petersburg v. Total Containment, Inc.*, 265 F.R.D. 630, 651 (S.D. Fla. 2010).

Plaintiff's claim is typical of those of the rest of the Putative Class here because she was sent the same “form collection letter” sent to the rest of the Putative Class. And she seeks relief based upon the same legal theory as the rest of the Putative Class. *See Shelley v. AmSouth Bank*, No. CIV.A.97-1170-RV-C, 2000 WL 1121778, at *4 (S.D. Ala. July 24, 2000) (holding that typicality is established where “the claims or defenses of the class and the class representative arise from the same event or pattern or practice” and/or “are based on the same legal theory” (quoting *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984))). Accordingly, the typicality requirement is met here.

4. **Adequacy**

Rule 23(a)(4) requires that “representative parties will fairly and adequately protect the interests of the class.” FED. R. CIV. P. 23(a)(4). This requirement “encompasses two separate inquiries: (1) whether any substantial conflicts of interest exist between the

representatives and the class; and (2) whether the representatives will adequately prosecute the action.” *Busby v. JRHBW Realty, Inc.*, 513 F.3d 1314, 1323 (11th Cir. 2008) (citation omitted).

Here, as explained above, the alleged conduct towards Plaintiff is identical to other Putative Class members. Thus, no inherent conflicts of interest exist. In addition, Plaintiff has submitted a declaration in support of the Joint Motion wherein she states she understands her responsibilities as a representative for the Putative Class,² indicates her willingness to serve as one, and indicates that she is neither employed by nor related to any of her counsel. (Doc. 21-1.) Counsel for Plaintiff has also submitted a declaration to attest to his qualifications and experience. (Doc. 19.) Accordingly, Plaintiff and Plaintiff’s counsel have demonstrated that they can adequately represent the Putative Class.

C. Rule 23(b)(3) Requirements

1. **Predominance**

“Under Rule 23(b)(3) it is not necessary that all questions of law or fact be common[;] only that some questions are common and that they predominate over the individual questions.” *Klay v. Humana, Inc.*, 382 F.3d 1241, 1254 (11th Cir. 2004). But “[t]he class

² Specifically, Plaintiff declares she understands that: (1) “as a class representative I have the responsibility to see that the lawyers prosecute the case on behalf of the entire class, not just myself”; (2) “I may have to testify at a deposition and/or trial and provide documents and information for use in the case”; (3) “the case cannot be dropped or settled without protecting the class members,” which “normally means that the other members of the class have to get a fair monetary settlement of their claims”; and (4) “the Court has to approve any settlement or disposition on behalf of the class.” (Doc. 21-1, ¶ 7.)

issues subject to generalized proof must predominate over issues subject to individualized proof.” *In re HealthSouth Corp. Sec. Litig.*, 257 F.R.D. 260, 276 (N.D. Ala. 2009). “In essence, the Court must determine whether there are common liability issues which may be resolved efficiently on a class-wide basis.” *Outten*, 2010 WL 2194442, at *4 (citations and quotation marks omitted). The one—predominate—question common to all members of the Putative Class is whether language in CardWorks’s “form collection letter” violates the FDCPA. “Given the standardized nature of the alleged pattern of conduct, a general determination can be made here whether the FDCPA was violated.” *Id.* (citation omitted). Accordingly, it is clear that questions in common predominate over individual questions, should any exist.

2. **Superiority**

Rule 23(b)(3) sets out four specific considerations pertinent to determining whether a class action is superior to other forms of action:

- (A) the class members’ interests in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (D) the likely difficulties in managing a class action.

FED. R. CIV.P. 23(b)(3). Like the court in *Outten*, also an FDCPA case certified for settlement, we too find:

that a class action is superior to other forms of action given the large number of potential claims, the comparatively small statutory damages each individual Putative Class member would be entitled to, the need for consistent litigation, and the doubtful benefit to the unnamed class members of controlling the litigation themselves. The potential difficulties in managing the class are likely to be limited and the existence of a proposed settlement suggests that these limited difficulties may never arise.

2010 WL 2194442, at *4. Accordingly, here too, a class action is superior to other forms of action.

D. Certifying the Settlement

A settlement will be certified so long as it is “fair, adequate and reasonable and is not the product of collusion between the parties.” *Bennett*, 737 F.2d at 986; *see also* FED. R. CIV.

P. 23(e)(2). The Eleventh Circuit has

identified the following factors as relevant to our review of whether a class settlement’s terms are fair, reasonable and adequate: (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.

In re CP Ships Ltd. Sec. Litig., 578 F.3d 1306, 1318 (11th Cir. 2009) (quoting *Bennett*, 737 F.2d at 986), *abrogated on other grounds by Morrison v. Nat’l Australia Bank Ltd.*, --- U.S. ---, 130 S. Ct. 2869 (2010). For purposes of preliminary approval, the undersigned concludes that the while it is too early in the approval process to determine whether the fourth and fifth factors will ultimately weigh against the fairness of this settlement proposal, the first three factors—at least as of the date of this recommendation—indicate that the settlement is fair, reasonable, and adequate.

First—and foremost—as Plaintiff points out in her brief in support (Doc. 21, p. 8), there appears to be a circuit split—recognized, but not yet resolved, by the United States Supreme Court—regarding whether the requirement in CardWorks’s “form collection letter” that disputes must be communicated “in writing” (Doc. 1, ¶¶ 8-14) violates the FDCPA. *See Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, --- U.S. ----, 130 S. Ct. 1605, 1610 n.3 (2010) (“Because the question was not raised on appeal, the Court of Appeals did not address whether Carlisle’s inclusion of the “in writing” requirement violated § 1692g. We likewise express no view about whether inclusion of an “in writing” requirement in a notice to a consumer violates § 1692g, as that question was not presented in the petition for certiorari. *Compare Graziano[v. Harrison*, 950 F.2d 107, 112 (3d Cir. 1991)] (reading § 1692g(a)(3) to require that “any dispute, to be effective, must be in writing”), *with Camacho[v. Bridgeport Fin., Inc.*, 430 F.3d 1078, 1082 (9th Cir. 2005)] (under § 1692g(a)(3), “disputes need not be made in writing”).”) (internal citation omitted). Thus, success at trial is not guaranteed.

Next, the range of possible settlements is limited in this case by statute to the lesser of \$500,000 or 1 per centum of CardWorks’s net worth. 15 U.S.C. § 1692k(a)(2)(B). CardWorks’s counsel, in the Settlement Agreement (attached as Exhibit 1 to the Second Joint Motion) represents that 1% of CardWorks’s net worth as of the relevant date—December 31, 2009—is approximately \$109,000.³ (Doc. 27, pp. 3-4.) The parties’ proposed Settlement

³ CardWorks has also submitted *in camera* an officer’s certificate attesting to this, but has asked that its “contents—except for the fact that the net worth does not exceed a certain amount—be

Agreement provides that “[i]n consideration of the full and complete settlement, release and discharge of all claims of the Class Rep and the Class against CardWorks, and subject to the provisions of this Settlement Agreement and all applicable orders of the District Court, CardWorks agrees to pay up to, and in no case more than, \$100,000,” with \$3,000 going to Plaintiff, \$35,000 going to Class Counsel, and “up to, but in no case more than, \$62,000” going to establish a Class Fund from which all costs associated with providing notice and distributing settlement funds to the Class will be deducted prior to distribution of pro-rata payments up to \$10 to each member of the Class who submits a claim form. (Doc. 27, pp. 4-5.) While the establishment of a total potential amount (\$100,000) almost equal to the maximum amount the Class would be entitled to under the statutory cap (\$109,000) points strongly toward the acceptance of the settlement, *see Outten*, 2010 WL 2194442, at *5, the undersigned finds that the proposed Settlement Agreement’s provision for specific payments to Plaintiff—of \$3,000—and the putative Class Counsel—of \$35,000—*while potentially reasonable*, is premature.

That is because

[t]o comply with Rule 23(e), the district court *must thoroughly review the attorney’s fees agreed to by the parties in the proposed settlement agreement*. *See Strong v. BellSouth Telecomm., Inc.*, 137 F.3d 844, 849-50 (5th Cir. 1998). [Moreover, i]n an FDCPA case, the defendant is liable for “the costs of

kept confidential and not made public,” or, if necessary, it be filed under seal. For purposes of preliminary approval of the class settlement, the undersigned will rely on CardWorks’s counsel’s representation and the *in camera* submission. However, CardWorks is **ORDERED** to file a public version of the officer’s certificate and attached financial statement no later than **ten (10) days** prior to the Fairness Hearing.

the action, together with a reasonable attorney's fee" ***to be determined by the court***. 15 U.S.C. § 1692k(a)(3).

Henderson v. Eaton, No. Civ.A. 01-0138, 2002 WL 31415728, at *4 (E.D. La. Oct. 25, 2002) (emphasis added). "A district court is not bound by the agreement of the parties as to the amount of attorneys' fees." *Piambino v. Bailey*, 610 F.2d 1306, 1328 (5th Cir. 1980).⁴ To fully discharge its duty to review and approve class action settlement agreements, a district court must assess the reasonableness of the attorneys' fees. *See id.* "The purpose of this salutary requirement is to protect the nonparty members of the class from unjust or unfair settlements affecting their rights" as well as to minimize conflicts that "may arise between the attorney and the class [and] between the named plaintiffs and the absentees." *Id.* at 1327-28; *see also Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1296 n.9 (11th Cir. 1999) ("[T]he district court has an independent supervisory duty to assess the appropriateness of the fee award apart from any agreement reached by plaintiff and defense counsel."); *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1304 (11th Cir. 1988) ("The court's order on attorney's fees must allow meaningful review – the district court must articulate the decisions it made, give principled reasons for those decisions, and show its calculation.") (citation omitted); *Rodriguez v. Fuji Sushi, Inc.*, No. 6:08-cv-1869-Orl-22KRS, 2009 WL 1456444, at *3 (M.D. Fla. May 22, 2009) ("The court 'must thoroughly review the attorneys' fees agreed to by the parties,' even when it 'finds the settlement agreement to be untainted by

⁴ The Eleventh Circuit, in *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (en banc), adopted as binding precedent all decisions of the former Fifth Circuit issued before October 1, 1981. *See id.* at 1209.

collusion, fraud, and other irregularities.’” (quoting *Strong*, 137 F.3d at 850)). Accordingly, the propriety of payments to Plaintiff and—moreover—to the putative Class Counsel is something to be taken up at the Fairness Hearing, after submission of evidence and briefing regarding the same. *See, e.g., Rosenau v. Unifund Corp.*, 646 F. Supp. 2d 743, 746-49 (E.D. Pa. 2009) (final approval order, in which court discusses procedural history, including the fact that after the court preliminarily approved the class settlement, it sent notice to the class, prior to fairness hearing, which included amount class counsel sought in compensation).

CONCLUSION

In light of the foregoing, the undersigned **RECOMMENDS** that the Second Joint Motion (Doc. 27) be **GRANTED** and the Initial Joint Motion (Doc. 16) be deemed **MOOT**.

The undersigned further **RECOMMENDS**:

1. That the Court preliminarily certify for settlement purposes an “opt-out” class pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) consisting of: all persons in the United States who received from CardWorks the form collection letter annexed as Exhibit A to this Report and Recommendation, between August 28, 2008 and August 28, 2009.
2. That the Court appoint Susi Dalton to be Class Representative.
3. That the Court appoint Kenneth J. Reimer, Esq. and Earl P. Underwood, Jr., Esq. to be Class Counsel pursuant to Fed. R. Civ. P. 23(g).
4. That the Court preliminary approve the proposed Class Settlement (Doc. 27, Ex. 1 (pp. 5-22)), as the undersigned finds the proposed settlement fair, reasonable and adequate, subject to further consideration at a Fairness Hearing, as provided for below.

5. That the Court approve the appointment of Steve Tilghman as the Claims Administrator, and further approve the form of Notice provided as Exhibit C to the Proposed Class Settlement (Doc. 27, Ex. 1 (pp. 17-22)) (the “Class Notice”).

6. That the following manner for distribution of Class Notice to Class members be implemented: CardWorks shall arrange to have the Class Notice sent to all Class members in substantially the proposed form by first class mail, postage prepaid no later than 60 days before the date set for the Fairness Hearing. Class members shall then have until 30 days before the date set for the Fairness Hearing to either (1) exclude themselves from the settlement (“opt-out”), (2) object to the fairness of the settlement, or (3) enter an appearance in this matter. Objections should be sent to the Court, Class Counsel, and Counsel for CardWorks, and should include reasons for objecting to the proposed settlement. To receive a share of the settlement funds, Class members must submit a completed Claim Form (Ex. B to the proposed Class Settlement (Doc. 27, p. 16)) postmarked by no later than 30 days before the date set for the Fairness Hearing.

7. That the Court require Class Counsel to file—at least ten days before the Fairness Hearing—the following with the Court: (1) a sworn statement attesting to compliance with their obligations as to Class Notice (which recommended obligations are set forth above); (2) a motion for award of attorney’s fees, costs and expenses, including appropriate evidence to allow the Court to make its determination as to the propriety of the request(s); and (3) a public version of the officer certificate and attached financial statement submitted in camera on August 26, 2010 (see Magistrate Judge’s Report & Recommendation,

p. 14 n.3).

8. That the Court set a Fairness Hearing to consider the Settlement and any objections thereto, and to determine, among other things:

- Whether the Class should be finally certified pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3);
- Whether the Settlement should be approved as fair, adequate, reasonable, and consistent with the public interest;
- Whether Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement, and whether Class Counsel's petition for attorneys' fees and reimbursement of costs and expenses should be approved; and
- To consider such other matters as the Settlement Agreement contemplates or the Court may deem just and proper.

Any Class member may appear at the hearing. However, to preserve this ability to appear, the Class member must, in a mailing post-marked by 30 days before the the date set for the Fairness Hearing (a) notify the Court, Class Counsel, and Counsel for CardWorks of his or her intent to appear, (b) include with this notice a statement indicating their objections to the settlement, and (c) any evidence the individual would like the Court to consider at the fairness hearing. Any person who fails to object in one of the manners provided above will be deemed to have waived their ability to object to the proposed Class Settlement.

9. That the Court find that the Class Notice to be provided to Class members as discussed in paragraphs 5 and 6 above—and filed as Exhibit C to the proposed Class Settlement (Doc. 27, Ex. 1 (pp. 17-22))—to be the best means of providing notice practicable under the circumstances and, when completed, shall constitute due and sufficient notice of

the Class Certification, the proposed Settlement and the Fairness Hearing to all persons affected by and/or entitled to participate in the class action and settlement reached by the parties, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

10. That the Court allow the Parties until ten days after the Fairness Hearing to file a motion for final approval of the settlement.

The instructions that follow the undersigned's signature contain important information regarding objections to the report and recommendation of the Magistrate

Judge.

DONE this the 18th day of November, 2010.

s/ WILLIAM E. CASSADY
UNITED STATES MAGISTRATE JUDGE

**MAGISTRATE JUDGE'S EXPLANATION OF PROCEDURAL RIGHTS AND
RESPONSIBILITIES FOLLOWING RECOMMENDATION, AND
FINDINGS CONCERNING NEED FOR TRANSCRIPT**

1. *Objection.* Any party who objects to this recommendation or anything in it must, within fourteen (14) days of the date of service of this document, file specific written objections with the Clerk of this court. Failure to do so will bar a *de novo* determination by the district judge of anything in the recommendation and will bar an attack, on appeal, of the factual findings of the Magistrate Judge. See 28 U.S.C. § 636(b)(1)(C); *Lewis v. Smith*, 855 F.2d 736, 738 (11th Cir. 1988); *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. Unit B, 1982) (*en banc*). The procedure for challenging the findings and recommendations of the Magistrate Judge is set out in more detail in S.D. ALA. L.R. 72.4 (June 1, 1997), which provides that:

A party may object to a recommendation entered by a magistrate judge in a dispositive matter, that is, a matter excepted by 28 U.S.C. § 636(b)(1)(A), by filing a “Statement of Objection to Magistrate Judge’s Recommendation” within ten days¹ after being served with a copy of the recommendation, unless a different time is established by order. The statement of objection shall specify those portions of the recommendation to which objection is made and the basis for the objection. The objecting party shall submit to the district judge, at the time of filing the objection, a brief setting forth the party’s arguments that the magistrate judge’s recommendation should be reviewed *de novo* and a different disposition made. It is insufficient to submit only a copy of the original brief submitted to the magistrate judge, although a copy of the original brief may be submitted or referred to and incorporated into the brief in support of the objection. Failure to submit a brief in support of the objection may be deemed an abandonment of the objection.

A magistrate judge’s recommendation cannot be appealed to a Court of Appeals; only the district judge’s order or judgment can be appealed.

2. *Transcript (applicable Where Proceedings Tape Recorded).* Pursuant to 28 U.S.C. § 1915 and FED. R. CIV. P. 72(b), the Magistrate Judge finds that the tapes and original records in this case are adequate for purposes of review. Any party planning to object to this recommendation, but unable to pay the fee for a transcript, is advised that a judicial determination that transcription is necessary is required before the United States will pay the cost of the transcript.

¹ Effective December 1, 2009, the time for filing written objections was extended to “14 days after being served with a copy of the recommended disposition[.]” FED. R. CIV. P. 72(b)(2).

UNITED STATES DISTRICT COURT

SOUTHERN

District of

ALABAMA

SUSSI DALTON

Plaintiff

V.

CARDWORKS SERVICING, LLC.

Defendant

NOTICE, CONSENT, AND ORDER OF REFERENCE —
EXERCISE OF JURISDICTION BY A UNITED STATES
MAGISTRATE JUDGE

Case Number: CASE NO. 09-563-CB-C

**NOTICE OF AVAILABILITY OF A UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION**

In accordance with the provisions of 28 U.S.C. §636(c), and Fed.R.Civ.P. 73, you are notified that a United States magistrate judge of this district court is available to conduct any or all proceedings in this case including a jury or nonjury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge shall be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of this district court.

CONSENT TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

In accordance with provisions of 28 U.S.C. §636(c) and Fed.R.Civ.P. 73, the parties in this case consent to have a United States magistrate judge conduct any and all proceedings in this case, including the trial, order the entry of a final judgment, and conduct all post-judgment proceedings.

Party Represented	Signatures*	Date
SUSSI DALTON	/s Earl P. Underwood, Jr. -with consent	11/29/2010
CardWorks Servicing, LLC	s/ James B. Newman	12/2/10

*Signatures may be electronically affixed (i.e. s/Judith Attorney) and, with consent so stated after the signature, counsel may electronically sign for other counsel (i.e. s/John Attorney, by consent).

ORDER OF REFERENCE

IT IS ORDERED that this case be referred to _____
United States Magistrate Judge, to conduct all proceedings and order the entry of judgment in accordance with 28 U.S.C. §636(c) and Fed.R.Civ.P. 73.

Date

United States District Judge

NOTE: EFILE THIS FORM WITH THE CLERK OF THE COURT ONLY IF ALL PARTIES HAVE CONSENTED TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE AND SIGNED THIS FORM AS SET OUT ABOVE.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SUSSI DALTON, individually and
on behalf of all similarly situated
individuals

:

Plaintiff,

:

Vs.

:

CA 09-00563-CB-C

CARDWORKS SERVICING, LLC,

:

Defendant.

:

ORDER

After due and proper consideration of all portions of this file deemed relevant to the issues raised, and there having been no objections filed, the Court hereby **ADOPTS** the recommendation of the Magistrate Judge (Doc. 28) that the parties' joint motion for preliminary approval of class settlement be granted. Subsequent to the entry of the Magistrate Judge's Report and Recommendation, the parties jointly filed their consent to the exercise of jurisdiction by the Magistrate Judge (Doc. 29). The Court has concurrently entered an order of reference enabling the Magistrate Judge to conduct all proceedings. Accordingly, this matter will be referred to the Magistrate Judge for further action.

DONE and **ORDERED** this the 21st day of December, 2010.

s/Charles R. Butler, Jr.
Senior United States District Judge

UNITED STATES DISTRICT COURT

SOUTHERN

District of

ALABAMA

SUSSI DALTON

Plaintiff

V.

CARDWORKS SERVICING, LLC.

Defendant

NOTICE, CONSENT, AND ORDER OF REFERENCE —
EXERCISE OF JURISDICTION BY A UNITED STATES
MAGISTRATE JUDGE

Case Number: CASE NO. 09-563-CB-C

NOTICE OF AVAILABILITY OF A UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

In accordance with the provisions of 28 U.S.C. §636(c), and Fed.R.Civ.P. 73, you are notified that a United States magistrate judge of this district court is available to conduct any or all proceedings in this case including a jury or nonjury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge shall be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of this district court.

CONSENT TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

In accordance with provisions of 28 U.S.C. §636(c) and Fed.R.Civ.P. 73, the parties in this case consent to have a United States magistrate judge conduct any and all proceedings in this case, including the trial, order the entry of a final judgment, and conduct all post-judgment proceedings.

Party Represented	Signatures*	Date
SUSSI DALTON	/s Earl P. Underwood, Jr. -with consent	11/29/2010
CardWorks Servicing, LLC	s/ James B. Newman	12/2/10

*Signatures may be electronically affixed (i.e. s/Judith Attorney) and, with consent so stated after the signature, counsel may electronically sign for other counsel (i.e. s/John Attorney, by consent).

ORDER OF REFERENCE

IT IS ORDERED that this case be referred to William E. Cassidy
United States Magistrate Judge, to conduct all proceedings and order the entry of judgment in accordance with 28 U.S.C. §636(c) and Fed.R.Civ.P. 73.

December 21, 2010 s/Charles R. Butler, Jr.
Date Senior United States District Judge

NOTE: **EFILE THIS FORM WITH THE CLERK OF THE COURT ONLY IF ALL PARTIES HAVE CONSENTED TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE AND SIGNED THIS FORM AS SET OUT ABOVE.**

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SUSSI DALTON, individually and on behalf of all similarly situated individuals	:	
Plaintiff,	:	
vs.	:	CA 09-0563-C
CARDWORKS SERVICING, LLC,	:	
Defendant.	:	

ORDER

On December 21, 2010, Senior District Judge Butler issued an order adopting the undersigned's November 18, 2010 Report and Recommendation (doc. 28), recommending that the parties' Joint Motion for Preliminary Approval of Class Settlement (doc. 27), filed November 11, 2010, be granted. (Doc. 30.) Judge Butler concurrently entered an order of reference (doc. 31) enabling the undersigned to conduct all proceedings in this action.

"Judicial review of a proposed class action settlement is a two-step process: preliminary approval and a subsequent fairness hearing." *Smith v. Wm. Wrigley Jr. Co.*, No. 09-60646-CIV, 2010 WL 2401149, at *1 (S.D. Fla. June 15, 2010) (citations omitted). The Court has decided that this class action should be preliminarily approved and is prepared to issue an order doing so, which, necessarily, will set the date for the Fairness Hearing. Because the parties must perform certain obligations prior to that hearing (*see* doc. 28, pp. 16-19), the Court—rather than arbitrarily setting the hearing date—requests that the parties propose a date, keeping in mind the following deadlines:

- Defendant shall arrange to have the Class Notice sent to all Class members in substantially the proposed form (*see* doc. 27, Ex. 1 (pp. 17-22)) by first class mail, postage prepaid, **no later than 60 days before** the Fairness Hearing.
- Class members shall have until **30 days before the Fairness Hearing** to either (1) exclude themselves from the settlement (“opt-out”), (2) object to the fairness of the settlement, or (3) enter an appearance in this matter. Objections should be sent to the Court, Class Counsel, and Counsel for Defendant, and should include reasons for objecting to the proposed settlement.
- Class members who elect to receive a share of the settlement funds must submit a completed Claim Form (Ex. B to the proposed Class Settlement (doc. 27, p. 16)), which must be postmarked by **30 days before the Fairness Hearing**.
- **At least ten (10) days before the Fairness Hearing**, Class Counsel must file the following with the Court: (1) a sworn statement attesting to compliance with the their obligations as will be set forth in this Court’s order preliminarily approving settlement and certification of the Class (*see* doc. 28, pp. 16-17); (2) a motion for award of attorney’s fees, costs and expenses, including appropriate evidence to allow the Court to make its determination as to the propriety of the request(s); and (3) a public version of the officer certificate and attached financial statement submitted in camera on August 26, 2010 (*see* doc. 28, p. 14 n.3).
- The parties will have until **ten (10) days after the Fairness Hearing** to file a motion for final approval of the settlement.

Accordingly, the parties are **ORDERED** to propose a date for the Fairness Hearing and notify the Court of that date by **January 13, 2011**.

DONE and **ORDERED** this the 30th day of December, 2010.

s/ WILLIAM E. CASSADY
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DISTRICT

SUSSIE J. DALTON,

*

Plaintiff,

*

vs.

* Case No.: 1:09-cv-00563-CB-C

CARDWORKS SERVICING,

*

Defendant.

*

JOINT RESPONSE TO COURT ORDER OF DECEMBER 30, 2010 AND
SUBMISSION OF NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

The parties propose the date and time of May 18, 2011 at 2:00 p.m. for the fairness hearing. The parties have received preliminary approval of this date and time from the Court. Attached hereto is the Notice of Proposed Class Action Settlement which has been reviewed by the Court.¹ The parties respectfully request that the Court date and sign the Notice so that it can be sent to the Settlement Administrator for distribution to the class.

¹ Minor changes to the Proposed Notice of Class Action Settlement submitted on November 11, 2010, have been made. These include completing blanks, correcting capitalization mistakes and making other minor changes. A "compare" document has been delivered to the Court to show the changes that have been made.

s/ James B. Newman

JAMES B. NEWMAN (NEWMJ8049)
Attorney for Defendant CardWorks
Servicing, LLC

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s/ Earl P. Underwood²

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276696

² Attorney Earl P. Underwood has given permission for his signature to be affixed to this document for filing with the Court.

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Definition of the Class

All persons in the United States who, from August 28th 2008 through August 28th 2009, were sent a form collection letter that contained the following statement, “*Unless you notify this office in writing within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid.*” by, or on behalf of CardWorks Servicing, LLC (“CardWorks”). Excluded from the Class are those persons who: (1) currently are in bankruptcy; (2) individuals who already have settled a lawsuit, claim, or obtained a judgment against CardWorks arising from any collection activity engaged in by CardWorks; (3) CardWorks, the officers, directors, and shareholders of CardWorks, or any affiliate of CardWorks, members of each of their immediate families and each of their legal representatives, heirs, successors or assigns; (4) any government entity; (5) all judicial officers in the United States and their relatives within the third degree of kinship; and (6) any entity in which CardWorks has or had a controlling interest.

IF YOU FALL WITHIN THE CLASS OF PERSONS TO WHOM THIS NOTICE IS DIRECTED (“CLASS MEMBERS”), READ THIS NOTICE CAREFULLY. YOUR RIGHTS WILL BE AFFECTED BY THE PROPOSED SETTLEMENT. A proposed settlement has been reached regarding claims against CardWorks. This lawsuit involves allegations that CardWorks sent a form collection letter that violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* If the proposed settlement is approved by the Court, persons within the class of persons to whom this notice is directed will be barred from filing any lawsuit related to the letters at issue. This notice briefly summarizes the claims and status of the suit and the terms of the proposed settlement. This notice also describes what you can do to object to the proposed settlement if you choose to object.

Nature of the Action

A lawsuit entitled *Sussi Dalton v. CardWorks Servicing, LLC*, CASE No. 09-CV-563 (the “Lawsuit”) has been filed and is now pending in the United States District Court for the Southern District of Alabama, (the “Court”). The suit alleges that CardWorks’ form letter to the Class did not properly advise Class members of their right to dispute a debt, in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*

Class Claims and Issues

The Court has ruled that the Lawsuit shall be maintained as a class action brought by the named Plaintiff, for herself and on behalf of the Class members, seeking monetary relief, attorney’s fees, and costs. The Court further has ruled that Earl P. Underwood, Jr., Kenneth J. Riemer and James D. Patterson, all of the firm Underwood & Riemer, PC. (hereinafter referred to as “Class Counsel”) are competent and capable of representing the interests of the class and are designated as counsel for the Class.

The approval by the Court of the Lawsuit as a class action does not mean that the named Plaintiff, or any of the Class Members, are entitled to recover the requested relief, nor does it mean that the named Plaintiff would be successful in this litigation. The ruling simply means that the ultimate outcome of this lawsuit will apply not only to the named Plaintiff but also to all Class Members and each will be bound by the outcome of this class action, unless the proposed settlement, for whatever reason, does not become final.

Proposed Settlement

The named Plaintiff, individually and on behalf of the Class members, and CardWorks have entered into and filed with the Court a proposed Stipulation of Settlement (“Settlement Agreement”). Under the terms of the Settlement Agreement, CardWorks denies any liability or any wrongdoing of any kind whatsoever and specifically denies each substantive allegation in the Lawsuit and asserts that its actions have been consistent with, and in compliance with, all applicable state and federal laws at all times relevant to this lawsuit. Nevertheless, to avoid further expense, burdensome and protracted litigation, and to forever put to rest all claims of the named Plaintiff or any Class member for all claims arising out of the use of the relevant form collection letter, CardWorks agrees to the following settlement terms:

- (a) CardWorks will discontinue the use of the collection letter made the basis of this action; and
- (b) CardWorks has agreed to pay a total settlement of up to \$100,000. Class members who timely file claims will be entitled to a payment, in an amount not to exceed \$10.00 per individual, from the settlement fund. The amount that you receive, if you submit a timely Claim Form, will be determined by the number of people who submit valid claims, but will not be more than \$10.00. The Parties have estimated that there are 18,500 class members. The amount you receive may be reduced if the cost of paying \$10.00 to everyone who submits a timely claim form is greater than the remainder of the settlement funds, after the payment of fees and the costs of administration of this settlement.

Attorney Fees and Class Representative Payment

CardWorks will pay Class Counsel \$35,000 in attorneys’ fees, costs and expenses and will pay \$3,000 to the named class representative, Sussi Dalton, from the Settlement Fund. Such payments are expressly conditioned upon approval by the Court.

Administration of Settlement

The settlement will be administered by a third-party administrator (“Settlement Administrator”). All calculations of the amount due to any individual Class member will be performed by the Settlement Administrator. This amount will then be distributed by checks made payable to individual Class members, and sent to the address listed on the returned Claim Form. The Settlement Administrator will have complete discretion to determine whether a particular Claim Form meets the requirements listed in the Stipulation of Settlement, including but not limited to (i) whether such Claim Forms are signed, (ii) whether the Claim Form was timely received and,

(iii) if the settlement fund is prorated, the amount due. The Settlement Administrator's decision on such matters shall be final.

Claim Form

UNDER THE SETTLEMENT AGREEMENT YOU WILL NOT RECEIVE ANY PAYMENT UNLESS THE CLAIM FORM IS COMPLETED AND RECEIVED BY THE SETTLEMENT ADMINISTRATOR NO LATER THAN 30 DAYS BEFORE THE FAIRNESS HEARING.

The Settlement Administrator shall be the sole judge of whether your claim was timely received. If you are a Class member, but you fail to follow these requirements, then you will not be entitled to recover any monetary relief although you will remain a member of the Class and be bound by the settlement.

Any checks received as a result of your filing a claim in this case not cashed within 180 days from the distribution date will be void.

PLEASE BE WARNED:

- **By submitting the enclosed Claim Form, and claiming that you (or the person on whose behalf you submit the Claim Form) is eligible to receive monetary relief under the Settlement Agreement, you are representing that you or the person you represent meet all requirements necessary to receive such monetary relief.**

If you are submitting a Claim Form on behalf of another person in a representative capacity, the Claim Form must be accompanied by a certified copy of your power of attorney, letters of administration, conservatorship, or other legal authorization to act as the representative of such other person.

Release of Claims and Binding Effect of Class Judgment

Under the proposed settlement, all Class members who do not opt out of the settlement will be bound by any judgment entered by the Court. CardWorks, its past or present parents, affiliates, subsidiaries, successors, predecessors and assigns, and its present or former directors, officers, employees, partners, members, principals, employees, agents, insurers and attorneys will be forever released from any and all claims, actions, liens, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever, known or unknown, of any kind or nature whatsoever, direct or consequential, foreseen or unforeseen, developed or undeveloped arising under, or related to the form collection letter or authorized by federal or state statutory, regularly, or common law including, but not limited to, those arising under the Fair Debt Collection Practices Act, and/or common law theories of fraud, suppression, misrepresentation, deceit, and/or deceptive practices, which have been asserted, or could have been asserted in this Lawsuit, all as provided for in the Settlement Agreement, and Class members will be forever barred from seeking further relief on any of these claims. Upon Court approval of the settlement, a judgment shall be

entered dismissing with prejudice and fully and finally settling this suit as to all Class members.

If you fail to return the Claim Form or to otherwise claim any settlement benefit provided for in the Settlement Agreement, you will still be bound by the releases under the Settlement Agreement.

How to Exclude Yourself From the Class

If you wish to exclude yourself from this Class (and receive no benefits and not be bound by the release and judgment), you must send a notice to the Settlement Administrator at P.O. Box 11250, Birmingham, Alabama 35209 no later than 30 days before the Fairness Hearing. No special form is required. However, the form must identify that you are a member of the Class in the matter of *Sussi Dalton v. CardWorks Servicing, LLC* CASE No. 09-CV-563 that you wish to exclude yourself from the settlement (opt-out), and be signed by you.

How to Object To the Settlement

On May 18, 2011 at 2:00 p.m., the Honorable Judge William E. Cassady, Magistrate Judge for the United States District Court for the Southern District of Alabama, will conduct a hearing on whether the proposed settlement should be approved as fair, reasonable and adequate and on the determination of the amount of attorneys' fees to be awarded. The hearing will be conducted at the United States District Court for the Southern District of Alabama, 113 St. Joseph Street, Mobile, Alabama 36602. The hearing may be adjourned from time to time by the Court without further notice to you, other than the official record in this action. If you are a member of the Class you have the right to ask the Court that the proposed class not be certified or that the proposed settlement not be approved if you think it is unfair, inadequate, unreasonable or improper in any way. You have the right to file any objections you might have to any aspect of the proposed settlement. If you wish to exercise your right to object, you must mail a written statement of your objections, along with a statement as to whether you wish to appear at the Settlement Hearing, either in person or through your counsel to:

Charles R. Diard, Jr.
Clerk of the Court
113 St. Joseph Street
Mobile, Alabama 36602

Your written objections to the settlement and/or notice of your intent to appear at the hearing must be filed with the Clerk of the Court no later than 30 days before the Fairness Hearing. You must also mail a copy of your written statement of objections and intention to appear to:

CLASS COUNSEL:

Earl P. Underwood, Jr.
UNDERWOOD & RIEMER, PC
21 South Section Street
Fairhope, Alabama 36533
(251) 990-5558

COUNSEL FOR DEFENDANT:

James B. Newman
HELMSING, LEACH, HERLONG, NEWMAN & ROUSE
Post Office Box 2767
Mobile, Alabama 36652
(251) 432-5521

You may (but are not required to) appear at the hearing, in person or through an attorney retained at your own expense, to support the proposed settlement, object to it, or ask questions about it. **DO NOT CALL THE COURT.** Any written objections to the settlement will be considered by the Court and there is no requirement that any objector appear personally at the hearing.

You do not have to come to the hearing to receive the benefits of settlement, but you must return the Claim Form if you are entitled to restitution under the Settlement Agreement (and you wish to receive such restitution). If the Court approves this settlement, the date of mailing of checks will be the fifth business day after the occurrence of all of the following: The entry of final judgment in this suit and dismissal of all claims with prejudice; the final award of attorney's fees, costs, and payment to the class representative; the expiration of any possibility of appeal of the Court's Judgment approving this settlement and awarding attorney's fees, and costs; and the Settlement Administrator's certification to Defendant of any Class members' eligibility for monetary relief. If the settlement is not approved, this suit will proceed and the settlement will be null and void.

Examination of Papers

This notice is a summary of the settlement and therefore does not include every detail of the settlement. You may inspect the complete Settlement Agreement, the complaint and all other pleadings filed in this suit during the hours of 8:30 a.m. to 4:30 p.m., Monday through Friday, at the office of the Clerk of the United States District Court for the Southern District of Alabama.

DATED this ____ day of _____, 2011.

WILLIAM E. CASSADY
UNITED STATES MAGISTRATE JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SUSSI DALTON, individually and	:	
on behalf of all similarly situated	:	
individuals	:	
 Plaintiff,	:	
 vs.	:	CA 09-563-C
 CARDWORKS SERVICING, LLC,	:	
 Defendant.	:	

**ORDER PRELIMINARILY APPROVING SETTLEMENT
AND CERTIFICATION OF CLASS**

For the reasons set forth in the Magistrate Judge's Report and Recommendation (Doc. 28), filed November 19, 2010,¹ it is **ORDERED and ADJUDGED** that:

1. The Court preliminarily **CERTIFIES** for settlement purposes an opt-out class pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) consisting of: all persons in the United States who, from August 28, 2009 through August 28, 2009, were sent a from collection letter that contained the following statement, "Unless you notify this office in writing within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid[.]" by, or on behalf of CardWorks Servicing, LLC ("CardWorks") (the "Class"). Excluded from the Class are those persons who: (1) currently are in bankruptcy; (2) individuals who already have settled a lawsuit, claim, or obtained a

¹ On December 21, 2010, the District Court issued an order adopting those recommendations (Doc. 30), and concurrently entered an order of reference (Doc. 31) enabling the undersigned to conduct all proceedings in this action.

judgment against CardWorks arising from any collection activity engaged in by CardWorks; (3) CardWorks, the officers, directors, and shareholders of CardWorks, or any affiliate of CardWorks, members of each of their immediate families and each of their legal representatives, heirs, successors, or assigns; (4) any government entity; (5) all judicial officers in the United States and their relatives within the third degree of kinship; and (6) any entity in which CardWorks has or had a controlling interest.

2. Susi Dalton is hereby **APPOINTED** as Class Representative.

3. Earl P. Underwood, Jr., Esq., Kenneth J. Reimer, Esq., and James D. Patterson, Esq. are hereby **APPOINTED** as Class Counsel pursuant to Fed. R. Civ. P. 23(g).

4. The Court preliminary **APPROVES** the proposed Class Settlement (Doc. 27, Ex. 1 (pp. 5-22)), as the Court finds the proposed settlement fair, reasonable and adequate, subject to further consideration at the Fairness Hearing provided for below.

5. The Court **APPROVES** the appointment of Steve Tilghman as the Claims Administrator, and further **APPROVES** the form of Notice provided as **Exhibit A to this Order** (the “Class Notice”). CardWorks shall arrange to have the Class Notice sent to all Class members in substantially the proposed form by first class mail, postage prepaid no later than **March 18, 2011**. Class members shall then have until **April 18, 2011** to either (1) exclude themselves from the settlement (“opt-out”); (2) object to the fairness of the settlement; or (3) enter an appearance in this matter. Objections should be sent to the Court, Class Counsel, and counsel for CardWorks, and should include reasons for objecting to the

proposed settlement. “Opt-out” notifications should be sent to the Claims Administrator, as instructed in the Class Notice.

The addresses for filing objections with the Court and service on counsel are as follows:

To the Clerk of Court:

Charles R. Diard, Jr., Clerk of the Court
United States District Court, Southern District of Alabama,
113 St. Joseph Street
Mobile, AL 36602

To each of the following, designated Class Counsel and counsel for CardWorks:

Class Counsel—

Earl P. Underwood, Jr., Esq.
Underwood & Reimer, PC
21 South Section Street
Fairhope, AL 36533
(251) 990-5558

Counsel for CardWorks—

James B. Newman, Esq.
Helmsing, Leach, Herlong, Newman & Rouse
P.O. Box 2767
Mobile, AL 36652
(251) 432-5521

6. To receive a share of the settlement funds, Class members must submit a completed Claim Form (Ex. B to the proposed Class Settlement (Doc. 27, p. 16)) postmarked by **April 18, 2011**. The Claim Form is enclosed with, and instructions regarding submission of same are included in, the Class Notice.

7. Class Counsel is **ORDERED** to file the following with the Court: (1) a sworn statement attesting to compliance with the their obligations in Paragraph 5; (2) a motion for award of attorney's fees, costs and expenses, including appropriate evidence to allow the Court to make its determination as to the propriety of the request(s); and (3) a public version of the officer certificate and attached financial statement submitted *in camera* on August 26, 2010 (*see* Doc. 28, p. 14 n.3) no later than **May 9, 2011**.

8. A Fairness Hearing will be held before this Court on **May 18, 2011** at **2:00 p.m.** in Courtroom 3A at the United States Courthouse, 113 St. Joseph Street, Mobile, Alabama, to consider the Settlement and any objections thereto, and to determine, among other things:

- Whether the Class should be finally certified pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3);
- Whether the Settlement should be approved as fair, adequate, reasonable, and consistent with the public interest;
- Whether Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement, and whether Class Counsel's petition for attorneys' fees and reimbursement of costs and expenses should be approved; and
- To consider such other matters as the Settlement Agreement contemplates or the Court may deem just and proper.

Any Class member may appear at the hearing. However, to preserve this ability to appear, the class member must, in a mailing post-marked by **April 18, 2011** (a) notify the Court, Class Counsel, and counsel for CardWorks of his or her intent to appear; (b) include

with this notice a statement indicating their objections to the settlement; and (c) any evidence the individual would like the Court to consider at the fairness hearing. Any person who fails to object in one of the manners provided above will be deemed to have waived their ability to object to the proposed Class Settlement.

9. The Class Notice to be provided to class members as set forth in paragraph 5—and filed as **Exhibit A to this Order**—is found to be the best means of providing notice practicable under the circumstances and, when completed, shall constitute due and sufficient notice of the Class Certification, the proposed Settlement and the Fairness Hearing to all persons affected by and/or entitled to participate in the class action and settlement reached by the parties, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

10. Unless extended at the Fairness Hearing, the parties have until **May 28, 2011** to file a motion for final approval of the settlement.

DONE and ORDERED this the 21st day of January, 2011.

s/ WILLIAM E. CASSADY
UNITED STATES MAGISTRATE JUDGE

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Definition of the Class

All persons in the United States who, from August 28th 2008 through August 28th 2009, were sent a form collection letter that contained the following statement, "*Unless you notify this office in writing within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid.*" by, or on behalf of CardWorks Servicing, LLC ("CardWorks"). Excluded from the Class are those persons who: (1) currently are in bankruptcy; (2) individuals who already have settled a lawsuit, claim, or obtained a judgment against CardWorks arising from any collection activity engaged in by CardWorks; (3) CardWorks, the officers, directors, and shareholders of CardWorks, or any affiliate of CardWorks, members of each of their immediate families and each of their legal representatives, heirs, successors or assigns; (4) any government entity; (5) all judicial officers in the United States and their relatives within the third degree of kinship; and (6) any entity in which CardWorks has or had a controlling interest.

IF YOU FALL WITHIN THE CLASS OF PERSONS TO WHOM THIS NOTICE IS DIRECTED ("CLASS MEMBERS"), READ THIS NOTICE CAREFULLY. YOUR RIGHTS WILL BE AFFECTED BY THE PROPOSED SETTLEMENT. A proposed settlement has been reached regarding claims against CardWorks. This lawsuit involves allegations that CardWorks sent a form collection letter that violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* If the proposed settlement is approved by the Court, persons within the class of persons to whom this notice is directed will be barred from filing any lawsuit related to the letters at issue. This notice briefly summarizes the claims and status of the suit and the terms of the proposed settlement. This notice also describes what you can do to object to the proposed settlement if you choose to object.

Nature of the Action

A lawsuit entitled *Sussi Dalton v. CardWorks Servicing, LLC*, CASE No. 09-CV-563 (the "Lawsuit") has been filed and is now pending in the United States District Court for the Southern District of Alabama, (the "Court"). The suit alleges that CardWorks' form letter to the Class did not properly advise Class members of their right to dispute a debt, in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*

Class Claims and Issues

The Court has ruled that the Lawsuit shall be maintained as a class action brought by the named Plaintiff, for herself and on behalf of the Class members, seeking monetary relief, attorney's fees, and costs. The Court further has ruled that Earl P. Underwood, Jr., Kenneth J. Riemer and James D. Patterson, all of the firm Underwood & Riemer, PC. (hereinafter referred to as "Class Counsel") are competent and capable of representing the interests of the class and are designated as counsel for the Class.

The approval by the Court of the Lawsuit as a class action does not mean that the named Plaintiff, or any of the Class Members, are entitled to recover the requested relief, nor does it mean that the named Plaintiff would be successful in this litigation. The ruling simply means that the ultimate outcome of this lawsuit will apply not only to the named Plaintiff but also to all Class Members and each will be bound by the outcome of this class action, unless the proposed settlement, for whatever reason, does not become final.

Proposed Settlement

The named Plaintiff, individually and on behalf of the Class members, and CardWorks have entered into and filed with the Court a proposed Stipulation of Settlement ("Settlement Agreement"). Under the terms of the Settlement Agreement, CardWorks denies any liability or any wrongdoing of any kind whatsoever and specifically denies each substantive allegation in the Lawsuit and asserts that its actions have been consistent with, and in compliance with, all applicable state and federal laws at all times relevant to this lawsuit. Nevertheless, to avoid further expense, burdensome and protracted litigation, and to forever put to rest all claims of the named Plaintiff or any Class member for all claims arising out of the use of the relevant form collection letter, CardWorks agrees to the following settlement terms:

(a) CardWorks will discontinue the use of the collection letter made the basis of this action; and

(b) CardWorks has agreed to pay a total settlement of up to \$100,000. Class members who timely file claims will be entitled to a payment, in an amount not to exceed \$10.00 per individual, from the settlement fund. The amount that you receive, if you submit a timely Claim Form, will be determined by the number of people who submit valid claims, but will not be more than \$10.00. The Parties have estimated that there are 18,500 class members. The amount you receive may be reduced if the cost of paying \$10.00 to everyone who submits a timely claim form is greater than the remainder of the settlement funds, after the payment of fees and the costs of administration of this settlement.

Attorney Fees and Class Representative Payment

CardWorks will pay Class Counsel \$35,000 in attorneys' fees, costs and expenses and will pay \$3,000 to the named class representative, Sussi Dalton, from the Settlement Fund. Such payments are expressly conditioned upon approval by the Court.

Administration of Settlement

The settlement will be administered by a third-party administrator ("Settlement Administrator"). All calculations of the amount due to any individual Class member will be performed by the Settlement Administrator. This amount will then be distributed by checks made payable to individual Class members, and sent to the address listed on the returned Claim Form. The Settlement Administrator will have complete discretion to determine whether a particular Claim Form meets the requirements listed in the Stipulation of Settlement, including but not limited to (i) whether such Claim Forms are signed, (ii) whether the Claim Form was timely received and,

(iii) if the settlement fund is prorated, the amount due. The Settlement Administrator's decision on such matters shall be final.

Claim Form

UNDER THE SETTLEMENT AGREEMENT YOU WILL NOT RECEIVE ANY PAYMENT UNLESS THE CLAIM FORM IS COMPLETED AND RECEIVED BY THE SETTLEMENT ADMINISTRATOR NO LATER THAN 30 DAYS BEFORE THE FAIRNESS HEARING.

The Settlement Administrator shall be the sole judge of whether your claim was timely received. If you are a Class member, but you fail to follow these requirements, then you will not be entitled to recover any monetary relief although you will remain a member of the Class and be bound by the settlement.

Any checks received as a result of your filing a claim in this case not cashed within 180 days from the distribution date will be void.

PLEASE BE WARNED:

- **By submitting the enclosed Claim Form, and claiming that you (or the person on whose behalf you submit the Claim Form) is eligible to receive monetary relief under the Settlement Agreement, you are representing that you or the person you represent meet all requirements necessary to receive such monetary relief.**

If you are submitting a Claim Form on behalf of another person in a representative capacity, the Claim Form must be accompanied by a certified copy of your power of attorney, letters of administration, conservatorship, or other legal authorization to act as the representative of such other person.

Release of Claims and Binding Effect of Class Judgment

Under the proposed settlement, all Class members who do not opt out of the settlement will be bound by any judgment entered by the Court. CardWorks, its past or present parents, affiliates, subsidiaries, successors, predecessors and assigns, and its present or former directors, officers, employees, partners, members, principals, employees, agents, insurers and attorneys will be forever released from any and all claims, actions, liens, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever, known or unknown, of any kind or nature whatsoever, direct or consequential, foreseen or unforeseen, developed or undeveloped arising under, or related to the form collection letter or authorized by federal or state statutory, regularly, or common law including, but not limited to, those arising under the Fair Debt Collection Practices Act, and/or common law theories of fraud, suppression, misrepresentation, deceit, and/or deceptive practices, which have been asserted, or could have been asserted in this Lawsuit, all as provided for in the Settlement Agreement, and Class members will be forever barred from seeking further relief on any of these claims. Upon Court approval of the settlement, a judgment shall be

entered dismissing with prejudice and fully and finally settling this suit as to all Class members.

If you fail to return the Claim Form or to otherwise claim any settlement benefit provided for in the Settlement Agreement, you will still be bound by the releases under the Settlement Agreement.

How to Exclude Yourself From the Class

If you wish to exclude yourself from this Class (and receive no benefits and not be bound by the release and judgment), you must send a notice to the Settlement Administrator at P.O. Box 11250, Birmingham, Alabama 35209 no later than 30 days before the Fairness Hearing. No special form is required. However, the form must identify that you are a member of the Class in the matter of *Sussi Dalton v. CardWorks Servicing, LLC* CASE No. 09-CV-563 that you wish to exclude yourself from the settlement (opt-out), and be signed by you.

How to Object To the Settlement

On May 18, 2011 at 2:00 p.m., the Honorable Judge William E. Cassady, Magistrate Judge for the United States District Court for the Southern District of Alabama, will conduct a hearing on whether the proposed settlement should be approved as fair, reasonable and adequate and on the determination of the amount of attorneys' fees to be awarded. The hearing will be conducted at the United States District Court for the Southern District of Alabama, 113 St. Joseph Street, Mobile, Alabama 36602. The hearing may be adjourned from time to time by the Court without further notice to you, other than the official record in this action. If you are a member of the Class you have the right to ask the Court that the proposed class not be certified or that the proposed settlement not be approved if you think it is unfair, inadequate, unreasonable or improper in any way. You have the right to file any objections you might have to any aspect of the proposed settlement. If you wish to exercise your right to object, you must mail a written statement of your objections, along with a statement as to whether you wish to appear at the Settlement Hearing, either in person or through your counsel to:

Charles R. Diard, Jr.
Clerk of the Court
113 St. Joseph Street
Mobile, Alabama 36602

Your written objections to the settlement and/or notice of your intent to appear at the hearing must be filed with the Clerk of the Court no later than 30 days before the Fairness Hearing. You must also mail a copy of your written statement of objections and intention to appear to:

CLASS COUNSEL:

Earl P. Underwood, Jr.
UNDERWOOD & RIEMER, PC
21 South Section Street
Fairhope, Alabama 36533
(251) 990-5558

COUNSEL FOR DEFENDANT:

James B. Newman
HELMSING, LEACH, HERLONG, NEWMAN & ROUSE
Post Office Box 2767
Mobile, Alabama 36652
(251) 432-5521

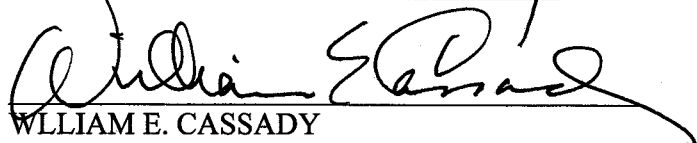
You may (but are not required to) appear at the hearing, in person or through an attorney retained at your own expense, to support the proposed settlement, object to it, or ask questions about it. **DO NOT CALL THE COURT.** Any written objections to the settlement will be considered by the Court and there is no requirement that any objector appear personally at the hearing.

You do not have to come to the hearing to receive the benefits of settlement, but you must return the Claim Form if you are entitled to restitution under the Settlement Agreement (and you wish to receive such restitution). If the Court approves this settlement, the date of mailing of checks will be the fifth business day after the occurrence of all of the following: The entry of final judgment in this suit and dismissal of all claims with prejudice; the final award of attorney's fees, costs, and payment to the class representative; the expiration of any possibility of appeal of the Court's Judgment approving this settlement and awarding attorney's fees, and costs; and the Settlement Administrator's certification to Defendant of any Class members' eligibility for monetary relief. If the settlement is not approved, this suit will proceed and the settlement will be null and void.

Examination of Papers

This notice is a summary of the settlement and therefore does not include every detail of the settlement. You may inspect the complete Settlement Agreement, the complaint and all other pleadings filed in this suit during the hours of 8:30 a.m. to 4:30 p.m., Monday through Friday, at the office of the Clerk of the United States District Court for the Southern District of Alabama. These materials are also available on the Court's website, at <http://www.alsd.uscourts.gov>.

DATED this 21st day of JANUARY, 2011


WILLIAM E. CASSADY
UNITED STATES MAGISTRATE JUDGE